

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1909.

No. 820.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ANSONIA BRASS AND COPPER COMPANY, AMERICAN
STEEL CASTING COMPANY, ET AL.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF
VIRGINIA.

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S. H. HAWES & COMPANY ET ALs.

22.

WILLIAM R. TRIGG COMPANY ET ALS.

*To the honorable judges of the Supreme Court of Appeals of
Virginia, at Richmond:*

The following petitioners respectfully represent that they are aggrieved by a final decree entered by the Honorable Daniel Grinnan, judge of the Chancery Court of the city of Richmond, Virginia, on the 4th day of February, 1908, in a cause therein pending under the style of S. H. Hawes & Company v. The William R. Trigg Company.

Your petitioners respectfully pray that they be awarded an appeal and supersedeas to the said decree.

Ansonia Brass & Copper Co., Babcock & Wilcox Co., Brown Hoisting Machine Co., Carnegie Steel Co., Chesapeake & Ohio Coal Agency Co., Fore River Ship & Engine Co., Hilles & Jones Co., Keasby & Mattison Co., F. H. Lovell & Co., Merchant & Company;
2 Morris, Wheeler & Co.; Southard & Co., Newport News Shipbuilding & Dry Dock Company, American Steel Casting Co., Blake Mfg. Co., Carbon Steel Co., Chicago Pneumatic Tool Co., Cleveland City Forge & Iron Co., Hendricks Bros., Laidlow-Dunn-Gordon Co., Lunkheimer Co., J. L. Mott Iron Works, National Tube Co., Sayen & Schultze, Worth Bailey Co., by R. G. Bickford, their attorney.

Charles Este. C. C. Knight & Co., by Floyd Hughes, their attorney.

Commercial Trust Co., trustee; Bank of Richmond, Inc., trustee; R. C. Hoffman & Co., Seaboard Steel Casting Co., Jameson McKenzie & Evans, Shelby Iron Co., The Bucyrus Co., by Munford, Hunton, Williams & Anderson, their attorneys.

A. P. Swoyer Co., American Locomotive Co., Morris Machine Works, Crocker Wheel Co., By McGuire, Riely & Bryan, their attorneys.

S. H. Hawes & Company, by Christian, Gordon & Christian, their attorneys.

J. L. Lindsay, by R. L. Montague, his attorney.

3 Baldwin & Brown, Smith Courtney Company, Crucible Steel Company, Williamson Bros. & Co., Chas. Corey & Son, Speakman Supply & Pipe Company, by Allan G. Collins, their attorney.

Gordon Metal Co., Monticello Hotel, by Smith, Moncure & Gordon,
their attorneys.

Phoenix Iron Co., Libby Mnfg. Co., Edgar G. Gunn, John Drever & Co., John Lucas & Co., N. L. Graves & Co., Adams & Westlake Co., John T. Lewis & Bro., Kanawha Fuel Co., Fairbanks Co., Manning, Maxwell & Moore, Ruckman Dynamo Works, Haydin & Derby Mnfg. Co., Eugene Nice, Cockran Bros., Fredk. Post Co., American Screw

Co., Gibson & Kirk, Ashcroft Mnf'g. C., by Jo Lane & Cary Ellis Stern, their attorneys.

First National Bank, Richmond, Va., by Geo. Bryan, Christian, Gordon & Christian, its attorneys.

The Savings Bank of Richmond, by A. W. Patterson, its attorney.

Coleman Wortham, trustee; Virginia Trust Company; Virginia

Trust Company, trustee for James N. Boyd and others

4 under certain written assignments from the William R. Trigg Company, by J. Jordan Leake and Christian, Gordon & Christian, their attorneys.

Statement of the case.

Prior to and during the year 1902, the William R. Trigg Company, a manufacturing corporation, was engaged in the business of building and manufacturing ships, boilers, engines and parts thereof, and were during the year of 1902 engaged in the construction for private persons of the following ships:

Bristol and Chester, for the Penna. R. R. Co., Hull No. 22, N. Y. P. & N. Co., for the N. Y. P. & N. Co, Lucas, for the Standard Oil Company; and were also engaged in the construction of the following ships for the United States Government: "Benyuard," "Mohawk," "Galveston."

The contracts for all of the above-named vessels were in writing and all appear in the accompanying transcript of the record.

During the period of construction of the said vessels, petitioners furnished various supplies and materials to the William R. Trigg Company in such wise as that the petitioners became entitled to a lien on all the property of the William R. Trigg Company.

The validity of your petitioner's liens were determined by decree of the chancery court of the city of Richmond, entered on the day of , sustaining the report of Commissioner Eugene C. Massie thereon. That decree was appealed from in the case of First National Bank of Richmond, &c., v. William R. Trigg Company, &c., 106 Va. 327, wherein the ruling of the lower court was sustained.

At the time of declaring the validity of the said liens, the
5 court made no attempt to ascertain the property of the William R. Trigg Company, to which the said liens attached, reserving that determination for a later decree.

Whereupon, on the 28th day of March, 1905, the honorable Eugene C. Massie filed a report, wherein, after an exhaustive inquiry into the facts and law of the case, he reported a lien against the several ships above mentioned. This valuable and able paper appears in the attached record, and it is hereby incorporated in this petition as a part hereof. To this report the various exceptions mentioned in the decree, dated were taken.

The case coming on to be heard upon the report and the exceptions thereto, the court sustained the exceptions (so far as they related

to appellants' lien on the said vessels under construction) and held that appellants were entitled to no lien thereon.

This appeal is taken from that decree.

The contracts for such ships may be classified as follows:

1st. Where the contracts made no provision as to ownership of the vessel or any part thereof.

Under this class are the contracts for the Pennsylvania tugs, the Standard Oil tank ship, and the N. Y. P. & N. tugs. In the case of these ships an ineffectual attempt was made to change the legal effect of the contracts, by the introduction of parol evidence.

2nd. Contracts which contained provisions indicating that parts paid for should be the property of the vendee, but made no specific provision as to the ownership of parts of the incomplete ship so far as such "parts" may be distinguished from "parts" of engines, appliances or materials.

To this class the "Benyard" belongs, and

3rd. Contracts recognizing the ownership of the vessels to be in the William R. Trigg Company, wherein the vendee of the vessel reserved a lien on the unfinished fabric for such installments of purchase money as it might make during construction.

To this class belongs the United States cruiser "Galveston" and "Mohawk."

Your petitioners claim that all the above ships, with, perhaps, the exception of the "Benyard," were the property of the William R. Trigg Company at the time of the filing of petitioners' several liens, and that all the said ships, including the "Benyard," were bound thereby.

6 This claim is made on the following ground, either of which, if maintained, will hold the ships.

1st. That the title of the unfinished vessels were in the Trigg Company.

2nd. That the contracts for the sale of either completed vessels or incomplete parts were void as against the supply lienors by the provisions of the supply lien statute.

3rd. That such contracts, not being recorded, are void as to creditors under the provisions of the recording acts, especially section 2465.

First assignment of error.

The court below erred in permitting parol evidence to be introduced to change the effect of the contracts of the Standard Oil ship, the Pennsylvania tugs, and the N. Y. P. & N. tugs.

As the contracts were drawn, they had a certain legal effect. This legal effect can be no more contradicted than if the legal intendments were set forth in so many words on the face of the contract, as will be seen in the argument under the assignment of error.

When the legal import of a contract is clear and definite, the intention of the parties is for all substantial purposes as distinctly and

as fully expressed as if they had written out in words what the law implies. It is immaterial how much or how little is expressed in words if the law attaches to what is expressed a clear and definite import. Though the writing consists only of a signature, as in the case of an endorser in blank, yet where the law attaches to it a clear and unequivocal and definite import, the contract imported by it can no more be varied or contradicted by evidence of a contemporaneous or parol agreement than if the whole contract had been fully written out in words.

See in support of the above views:

Woodward v. Baldwin & Foster, 18 Gratt. 200, citing, approvingly, LeFarge v. Rickert, 5 Wend. 187.

“LeFarge v. Rickert was a case where there was a written contract to deliver certain portable articles to the plaintiff, but no place of delivery was specified. It was held that by construction of law, the place of delivery was the residence of the plaintiff, and that
7 evidence was not admissible to prove a contemporaneous agreement fixing a different place of delivery. * * * The written contract was the only legal evidence as to the intention of the parties up to the time it was executed.”

See also Lilfengen, &c., Co. v. Mead, 42 Minn., 420.

But there is another and more powerful reason why parol evidence can not be given to show the understanding of the parties that title should pass. Such an understanding would certainly be a contract for the sale of goods and chattels, the possession whereof remains with the grantor.

Such a contract by provision of section 2465 of the code must be in writing; therefore, the parol arrangement, agreement, understanding, or whatever it might be considered can not operate, because to allow such parol evidence any effect would defeat the mandate of the statute.

“But the better opinion is that a written contract falling within the statute of frauds can not be varied by any subsequent agreement of the parties, unless such new agreement is also in writing.”

Swain v. Seamens, 9 Wall., 272.

Your petitioners, however, deny that the parol evidence, if given full credit, would have the effect of changing the legal intendments. At most, it simply amounts to an opinion of law from Mr. Lilburn T. Myers, which, it is to be noted, he did not communicate to the vendee companies. The evidence so far from rebutting, is quite consistent with the conclusion the law draws from the contract as written—that is, that the title is with the Trigg Company. This conclusion of law is definite. If parties wish to avoid it, their contractual stipulations should be equally definite. See authorities cited in the following assignments of error: Andrews v. Durant, 11 N. Y., 35; Hall v. Green, 1 Houston (Del.), 546; Williams v. Jackson, 16 Gray, 514; Briggs v. A Light Boat, 7 Allen, 287; Elliott v. Edwards, 35 N. J. Law, 265; Haney v. Schooner Rosabelle, 20 Wis., 261.

Second assignment of error.

That the Pennsylvania tugs ought to have been held the property subject to the supply liens, and the court erred in declaring to the contrary and in sustaining the exceptions to the commissioner's report, which held that the said tugs were subject to said liens.

8 The contract for the building of these tugs appears in the record. It was a concession in the court below that the lien of the supply lienors was good as against the Pennsylvania and N. Y. P. & N. tugs, if these tugs were the property of the William R. Trigg Company. Appellant in the court below contended that the tugs were the property of the William R. Trigg Company. This contention was denied by the appellees and was fully argued before Honorable Eugene C. Massie, to whom the matter was referred as a commissioner of the Chancery Court of the city of Richmond. Thereafter, the commissioner reported that the tugs were in truth the property of the William R. Trigg Company and subject to the liens. Upon exception to this report by appellees, the honorable judge of the Chancery Court of the city of Richmond, in the decree now appealed from, sustained the exceptions and held that the unfinished tugs were not the property of the William R. Trigg Company, and, therefore, were not subject to the lien.

Appellant here contends under this assignment that the said action of the Chancery Court of the city of Richmond was error, and that the report of the commissioner, holding said vessels to be the property of the William R. Trigg Company, and for that, as well as for other reasons hereinafter set forth, subject to the supply liens, should have been sustained.

It was not denied in the court below that as a general rule the title to a vessel under construction remains in the builder. That doctrine is too firmly settled, both in England and America, to be questioned, but it was contended that the particular contract under which these vessels were constructed indicated an intent of parties that the title should pass to the vendee. Parol evidence was also introduced, which had been referred to in the previous assignment of error, in the attempt to show a similar intent.

The evidence will indicate that the surrounding circumstances of the contract for the building of these tugs in no degree varied from the circumstances which must surround any contract for the building of any ship.

9 The evidence further shows that the practical construction put by the parties themselves upon their contracts was entirely consistent with the ownership of the Trigg Company and the parol evidence introduced to show a contrary intent amounted at most to an uncommunicated belief that the title did pass.

The real ground of contention in the court below was that the title of the tugs passed because the contract provided for an inspector

and provided for the payments of installments as the work progressed.

The decision of the court upholding this contention violated the American rule, which is correctly stated by the following text writers:

"Where one party contracts with another for the construction of a vessel by the latter for a given price, the general rule is that no property passes in the vessel until it be completed and delivered; and this general rule is not varied by any or all of the following facts:

"That the price is to be paid in installments as the work progresses; that the vessel is to be built under the superintendence of an inspector employed by the purchaser; that this inspector has the power to approve or reject the materials to be used in constructing the vessel; that the vessel is insured for the benefit of the purchaser; that the contract stipulates that the materials, as and when approved, should become the property of and belong to the purchaser. In other words, the passage of title to a chattel to be constructed is a matter of intention of parties to be arrived at from the terms of the contract between them; the rule being that no property passes until completion and that none of the above-mentioned circumstances indicated an intention in the parties to vary this general rule by the contract."

2 *Mechem on Sales*, sec. 755.

See also 2 *Parsons on Contract*, 8 Ed., 259.

"The cases on this subject were in much conflict. In the earlier English cases much reference is made to provisions in the English statutes and usages as to builders' certificates and the grand bill of sale, which do not exist in our own. We consider, however, that the law is now well settled, especially in this country and by recent cases. If it be the intention of the parties that the builder should sell and the purchaser buy the ship before it is completed, and at different stages of its progress, and a bargain is made sufficiently expressive of this intention, there is no reason whatever why the law should
10 not enforce such a bargain. But no such bargain would be implied from the mere fact that payment is to be made by instalments, whether they are graduated merely on time, or on the state or condition or progress of the ship. Nor would this implication arise from, or be greatly aided by, the employment by the purchaser of a superintendent. These facts might assist in identifying the structure, or sustaining an action for a breach of the contract; and they might bear on the amount of damages. But they would not be sufficient to prove an actual sale and transfer of the property by the payment of an instalment, so that after such payment, if the property were lost or destroyed, it would be the loss of the purchaser."

2 *Parsons on Contracts*, 259-260.

The rule is supported by the following authorities:

Merritt v. Johnson, 7 *Johnson* (N. Y.), 473; *Andrews v. Durant*, 11 N. Y., 34; *People v. Commissioners*, 58 N. Y., 244; *Hall v. Green*, 1 *Houston* (Del.), 546; *Shaw v. Smith*, 48 *Conn.*, 306; *Yukon River*

Steamboat Co. v. Brotto, 136 Cal., 538; Williams v. Jackman, 16 Gray, 514; Low v. Austin, 20 N. Y., 182; Briggs v. A Light Boat, 7 Allen (Mass.), 287; Wright v. Tetlow, 99 Mass., 397; Forsythe v. Dickson, 1 Grant Case, 26 (Penn.); Scull v. Shakespeare, 75 Pa., 297; Lang's Appeals, 81 Pa. St., 18; Coursin's Appeal, 79 Pa. St., 220; Strong v. Dinniry, 175 Pa. St., 586, 34 Atl. 919; Haney v. Schooner "Rosa-belle," 20 Wis., 261; Elliott v. Edwards, 35 N. J. L., 265; West Co. v. Trenton Co., 35 L. J. L., 517; Stevens v. Shippen, 29 N. J. Eq., 602; The Revenue Cutter No. 1, Fed. Cas. No. 11, 713; Revenue Cutter No. 2, Fed. Cas. No. 11, 714; The Sam Slick, Fed. Cas. No. 12,283; Clarkson v. Stevens, 106 U. S., 505; 27 L. Ed., 139; The Poconoket, 67 Fed., 262; The John B. Ketchum, 2nd, 97 Federal, 872; see also Trigg v. Bucyrus Company, 51 S. E., 175-176.

All the foregoing cases maintain the proposition that the appointment of an inspector, the paying of instalments, and the like are consistent either with the retention of ownership by the vendor, or its passage to the vendee, that the legal intendments of the contract being to place the ownership with the vendee, such stipulations are not sufficient to rebut presumptions of law arising from the contract.

11 "Nor is the result changed when the person for whom the vessel is to be built installs expensive boilers or engines."

The "John B. Ketchum," 97 Fed., 872.

"Nor though the property in the materials of which the vessel is constructed, be in the person for whom the vessel is being built."

Clarkson v. Stevens, 106 U. S., 516.

All persons are presumed to know the law, therefore the makers of this contract are presumed to be aware of the legal intendments that follow from their contract—knowing this, if their intent varied from the presumption, presumably they would have inserted specific provisions to secure that result. The cases last cited above, as well as those following, support this view of the law.

Andrews v. Durant, 11 N. Y., 35, 1854:

"I should say so marked a circumstance would be stated in words of unequivocal import and would not be left to rest upon construction, if a change of property was really intended."

"If it was intended that certain parts of the vessel should pass to the defendants as the work progressed and was paid for, it was very easy for the parties to have so provided in the contract in express terms. As they did not do this, we must gather the intent from the contract as expressed."

Hall v. Green, 1 Houston (Del.), 546; 71 Am. Dec., 96, 1858:

"This is a question of first impression in this State, and its solution must depend upon the construction to be given to the contract between the parties. It was undoubtedly competent for them to have agreed in express terms (if such had been their intention) that the property in the unfinished sloop should pass from Tubbs and vest in Hall upon payment by him of the first instalment. But they have not done so."

Williams v. Jackman, 16 Gray, 514 (Mass.), 1860:

"Under a contract for supplying labor and materials and making a chattel, no property passes to the vendee till the chattel is completed and delivered or ready to be delivered. This is the general law.
12 It must prevail in all cases unless a contrary intent is clearly expressed or clearly implied from the terms of the contract."

Briggs v. A Light Boat, 7 Allen (Mass.), 287.

"If, taking all the stipulations together, it is clear that the parties intended the property should vest in the purchaser during the progress of the work and before its completion, effect will be given to such intention, and the property will be held to pass accordingly; but, on the other hand, it will not be deemed to have passed out of the builder unless such intent is clearly manifested, but the general rule of the law will prevail."

Elliott v. Edwards, 35 N. J. L., 265:

"In the absence of any special contract to the contrary, the title to the vessel would have continued in the builder."

Haney v. The Schooner "Rosabelle," 20 Wis., 261:

"In the absence of clear and specific agreement to the contrary, that under a contract for the building of a vessel no property vests in the person for whom it is agreed to be built until it is finished and delivered."

Third assignment of error.

That the N. Y. P. & N. tugs ought to have been held the property of the Wm. R. Trigg Company, and to be subject to the supply liens, and the court erred in declaring to the contrary and in sustaining the exceptions to the commissioner's report which held that the said tug was subject to said lien.

What has been said under the argument to the second assignment of error applies in full force to this assignment.

The contract for the N. Y. P. & N. tug is very similar to that of the Pennsylvania tugs.

Fourth assignment of error.

That the Standard Oil vessel ought to have been held the property of the William R. Trigg Company and to be subject to the supply liens, and the court erred in declaring to the contrary and in
13 sustaining the exceptions to the report of the commissioner, which declared that the vessel was in fact and in law subject to the said lien.

What has been said under the argument of the second assignment of error applies also to this ship.

The contract for this vessel not only fails to disclose any provision indicating that the title passed to the vendee; on the contrary, the following provisions indicate positively an intent that the title did not so pass.

The contract provides:

1st. That the vessel shall be delivered afloat and complete in all respects and ready for service.

2nd. The contract provides that the purchase money, though payable in instalments, shall be "for the aforesaid steamship, finished, furnished, and complete as herein provided."

Fifth assignment of error.

The court erred in refusing to hold that section 2465 of the code was applicable to the contracts for the Pennsylvania tugs, the Cape Charles tug, and the Standard Oil tanker "Captain Lucas," and that in the absence of the writing or recordation there provided for, the said vessels remained in the ownership of the Trigg Company and were subject to the supply liens of the appellant.

It was conceded below, and on this appeal appellees will no doubt again concede, that unless the contract can be construed into a sale of the unfinished parts of the vessel, instead of a contract for the entire vessel, that the ownership remains with the Trigg Company and is, therefore, subject to the supply liens. The court below decided in effect that the contract, construed in the light of certain parol evidence, was a contract for the sale of unfinished parts of the respective vessels.

Under a former assignment of error appellant contended that section 2465 of the code (as well as other considerations there presented) required the contract of sale to be in writing.

The section is as follows—the italics are the writers:

14 "Every such contract in writing and every deed conveying any such estate or term, and every deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels, and every bill of sale or contract for the sale of goods and chattels when the possession is allowed to remain with the grantor (and any such bill of sale or contract shall be in writing and signed by the vendor), shall be void as to subsequent purchasers for valuable consideration without notice, and creditors, until and except from the time that it is duly admitted to record in the county or corporation wherein the property embraced in such contract, deed, or bill of sale may be; provided, that the possession of any such estate or term, without notice of other evidence of title, shall not be notice to said subsequent purchasers for valuable consideration. (Code 1849, p. 508, c. 118, sec. 5; 1895-6, p. 842; 1897-8, p. 833; 1899-00, p. 89.)"

Vol. 2. Pollard's Code of Virginia, sec. 2465.

Appellant contends:

First. Under the above statute the contract is void, whether it be taken for the complete or uncompleted parts of vessels, because it is not recorded.

Second. If the real contract of sale between the parties was for the uncompleted portions of the vessel and not the complete vessel, that contract is void, because not written, as well as because not recorded.

Either contention, if correct, is admittedly fatal to the pretensions of the appellees.

They therefore claimed, in the court below, that section 2465 has no application, because the section only applies to articles in a deliverable state.

In answer to that contention it should be sufficient to observe that the statute makes no such distinction, nor is the distinction supported by sound reason.

The general intendments of ownership of personal property in the course of manufacture, in Virginia, is fixed by *Dixon v. Myers*, 7 Grat., 240; and by *Trigg v. Bucyrus*, 51 S. E., 175.

“When a contract is made for the purchase of an article hereafter to be delivered and paid for, so long as any act remains to be
15 done by the vendor in order to put it in a state of readiness for delivery, the property does not pass to the buyer, but still remains at the risk of the seller.”

Wm. R. Trigg Co. v. Bucyrus Co., 51 S. E. Rep., 175-176.

If the general presumptions of the law are that an article in the hands of a vendor in an undeliverable state, is the vendor's property, is not the creditor of a manufacturer reasonably justified in the same assumption? Formerly it was possible for one to retain the badges of ownership, of which, an “undeliverable state” was a prominent one, and by unrecorded transfer pass the title to property which remained in his possession. In this way creditors were often misled to their hurt. The statute 2465 gives the creditor the right to assume that ownership continues until possession passes or the public records speak. The statute is intended for the benefit of creditors. What more reasonable than to require those whose actual relations to property differ from the relations which the law implied, to publish the fact. The statute is plainly intended to apply to articles in an “undeliverable state.” It refers not only to bills of sale, which relate to articles ready for delivery, but to contracts for sale, which relate to future delivery.

If the contracts are assumed to be for the parts of the vessel, these parts remain with the grantor, and, therefore, it is still necessary under section 2465 that the contract be recorded. The contracts undoubtedly contemplate the continued possession by the grantor of such parts, so that the entire work may be continuously prosecuted.

It may be remarked, that all the incomplete vessels were actually delivered by the receiver during the litigation below, they must have been in a “deliverable state” at the time of such delivery. They were practically in the same condition when delivered as when the liens were filed. They were in an “undeliverable state” at that time only because delivery, either actual or symbolic, was inconsistent with the contract for construction of a complete ship, which necessitated continuous possession.

There can be no delivery in fraud of the statute. The delivery which section 2465 requires is an actual and visible change in possession. No agreement between the parties, however clearly ex-

pressed in the contract, can prevent the operation of the statute when the possession remains with the vendor. If this were not so, the law might be entirely nullified by private convention between the parties. The law requires that such agreements should be spread upon the public records so that creditors may not be deceived into a false estimate of the debtors resources, the construction requested abrogates the statute.

This may be a hard case on the prospective purchaser and his alienee, but, as was said by Judge Staples, in the opinion in *Edison v. Huff & al.*, concurred in by the court:

"This court cannot construe away a plain statute to avoid cases of individual hardship. The legislature has thought proper to place all written contracts for the sale of land upon the same footing with deeds of conveyance, so far as they come within the influence of the registration acts, and we have no alternative but to enforce the law as it is written."

March, Price & Co. v. Chambers & al., 30 Grattan, 304.

In this case, as in that above cited:

"The effect of the statute is that, as to the appellants, Chambers must be regarded as entitled to the Danville lot at the date of their judgment against him, in like manner and to the same extent as if he had never aliened it."

March, Price & Co. v. Chambers & al., 30 Grattan, 304. See also, *Dobyns' Adm'x v. Waring & als.*, 88 Va., 169; *Price v. Wall*, 97 Va., 336.

Sixth assignment of error.

The court erred in declaring that any material assigned or unassigned to the said vessels, or either of them, or incorporated therein, became the property of the several vendees and further erred in not declaring them to be subject to appellant's liens.

The considerations set forth in this brief indicating the superiority of the right of the supply lienors in the unfinished vessels, apply for the same, or a greater reason, to the materials assigned or unassigned, incorporated or unincorporated. To avoid useless repetition, the court is respectfully referred to the argument of the various assignments of error herein.

Seventh assignment of error.

The court erred in holding that the express terms of the contract for the dredge "Benyuard" provided that the said unfinished dredge, its hull, engines, machinery, and all of its parts and belongings, complete and incomplete, excepting only the aforesaid assigned, but unincorporated, material, were prior to and at the time of the delivery above mentioned (July 14, 1903), the property of the said United States and that the said United States, by reason of the default of the said William R. Trigg Company, were then entitled under said contract to take possession of said

unfinished dredge, its hull, engines, machinery, and other parts, and have the same completed at the cost and expense of said company as to any excess above the contract price; whereas, neither did the contract so provide, nor does the said holding correctly state the legal consequences thereof, and the court errs in not holding that the said dredge and all assigned or unassigned incorporated material was the property of the Wm. R. Trigg Company and subject to the appellant's lien.

The contract for the "Benyard" required the Trigg Company to furnish, to the satisfaction of the Government, "all materials, machinery, appliances, supervision, and labor required for the vigorous prosecution of the work of constructing steel hull, of sea-going suction dredge, and construction and installing thereon propelling machinery and electric-light plant complete." The Government agrees to pay "\$252,375.00 for the hull and propelling machinery complete, delivered in accordance with the specifications." Beside this, the Government is to pay \$2,180.00 "for the electric plant complete, installed in strict accordance with the original specifications."

Section 2 of the contract provides that the Trigg Company shall complete the vessel within sixteen months.

The 4th section provides for the completion of the contract at the cost of the contractor.

The 9th section of the contract provides that no prior inspection, payment, or act is to be construed as a waiver of the Government to reject any defective work or material "until final inspection and acceptance of and payment for all of the material and work" provided for in the contract.

The 11th section of the contract provides that payments shall be made when the work contracted for shall have been delivered and accepted, as set forth in paragraph 210 of the specifications. That section is as follows:

18 "Provided the requirements of these specifications are complied with, ten equal payments will be made, based on the reports of the inspector, the first when the hull and propelling machinery are 10 per cent completed, the second when 20 per cent completed, and so on, the last payment being made when the work is turned over to the United States after successful trial as required by paragraph 209. From each of these payments, except the last, 20 per cent will be reserved until final payment. For computing the percentage of completion of this work it will be assumed, in the case of the twin-screw steel hull dredge described in detail above, that the cost of the hull is 72 per cent of the whole, and the cost of the propelling machinery 28 per cent; and a similar basis for computing payments will be adopted should an alternative proposal be accepted. Payments will be made by check on the U. S. Assistant Treasurer at New York."

Section 211 of the specifications relates to ownership, and is as follows:

"All parts paid for under the system of partial payments above specified shall become thereby the sole property of the United States, but this provision shall not be interpreted as relieving the contractor from the sole responsibility for the proper care and protection of said parts prior to the delivery of the dredge to the United States or from any other of the provisions of these specifications."

The contract and the specifications must, of course, be read together. When this is done it is apparent:

First. That no delivery of the incomplete parts was contemplated, for section 211 places upon the contractor the responsibility for the care and protection of the said parts prior to delivery of the dredge to the United States. Section 209 of the specifications also plainly indicate that delivery is not to occur until after trial.

If, however, the terms of the contract indicate to this court an intent of the parties that the property was to pass upon the payment of instalments, it is a sale which cannot affect the right of the supply lienor—the sale was made after the 21st of March, 1877. Section 2485 expressly provides that no such sale shall defeat or take precedence over the lien.

19 What could the Trigg Company contract to sell? Merely their interest.

Second. Though section 211 of the specifications provides that the parts paid for under the system of partial payments shall become the sole property of the United States, this provision should be read in connection with section 9 of the contract, above referred to, which gives to the United States the right "until final inspection," etc., to reject defective work or material. Therefore, the "ownership" which the United States takes in the parts "prior to final acceptance" is such relation which, nevertheless, permits a rejection of the defective work. If part of the work is defective, this will give the right to the Government, notwithstanding a payment made by it, to reject that part. If the whole of the work were defective, the Government would have the right to reject the whole.

Third. That if the contract be regarded as an expression of the intent of the parties that the property is to pass from time to time as instalments are made, it is manifest that notwithstanding materials and labor have gone into the hull of the vessel, after the portion of the vessel to which such later materials and workmanship had been added, had passed to the ownership of the Government upon the payment of a previous instalment, the added materials and workmanship did not pass to the ownership of the Government by accession, for the reason that section 211 of the specifications indicates that notwithstanding the physical addition of the materials and workmanship to the unfinished fabric, that the property therein shall remain in the contractor until the payment by the Government of an instalment thereon.

The record will show that the value of the materials and workmanship added to the structure after the time when the instalment which was paid became due amounted to upwards of \$40,000.

It is not admitted by the supply lienors that the contract indicates an intent to pass the title. So far as the right to reject exists, it is inconsistent with the idea that title passed.

Nor does it appear that the "final inspection" which the contract provides for was ever made.

20 "The contract provides that the relator shall have a lien on and ownership in the vessel as its building progresses up to the amount or amounts paid on account of its contract; such lien and ownership to attach simultaneously with such payments; and further, that the builder should keep such vessel and materials fully protected by insurance against fire; the policies of insurance for same to be for account of and made payable to relator. This, taken in connection with the statement of relator that the steamers were being built under contract and that none of them had been delivered and that payments made to the contractors had been made on account of their contracts, characterizes the interest of the relator as being not an absolute ownership but only an interest in the nature of a lien for its money advanced which might or might not ripen into a title to the vessel in construction."

People v. Com'rs, 58 N. Y., 244.

See also Clarkson v. Stevens, 106 U. S., 517.

In the case of the Revenue Cutter No. 1, there had been an actual sale of the incomplete vessel by the builder at the time of the payment of the first instalment.

Liens were filed by those who furnished materials, both before and after the date of the sale.

The court said:

"We are satisfied from an examination of the contract between the Government and Merry & Gay that the title was in the latter until the vessel was completed and delivered to the Government in September, 1857, and received and accepted by him in fulfillment of the terms of the contract."

The Revenue Cutter No. 1, Fed. Cas. No. 11713, 20 Fed Cas., 563.

The court is respectfully referred to the argument under the remaining assignments of error herein, particularly the second and twenty-fourth.

Eighth assignment of error.

The court erred in declaring that the supply lien creditors of the said William R. Trigg Company were not entitled to any claim of lien in or upon the said unfinished dredge "Benyard," or any of its parts, and erred in failing to adjudge that these appellants were entitled to their liens thereon.

21 The "Benyard" contract is not essentially different from the other contracts except in the provision of ownership referred to in the statement under the preceding assignment of error.

Therefore, the argument under the other assignments of error in this petition apply, and is, accordingly, here referred to.

Ninth assignment of error.

The court erred in declaring that section 2465 of the code of Virginia did not bind the United States, and further erred in failing to declare that the said section applied with full force to the contracts made with the Government, and that it binds the United States. This assignment applies to all the ships under construction for the United States Government.

Appellant contends that the contracts for the "Benyuard," "Mohawk," and "Galveston" are subject to the provisions of section 2465 and is void because not recorded, and the argument hereinbefore made under the fifth assignment of error is fully applicable thereto, and reference thereto is invited.

The court below assumed that the United States is not bound by the recording acts of the State of Virginia.

The court below applied the general rule of the common law, that the sovereign is not bound unless specially mentioned. This rule is subject to the exceptions to which appellant hereinafter refers. It may properly be stated at this point that the rule has no application to a state law where the United States is concerned.

"Under the operation of the act of the legislature of Illinois of February 27, 1833, for the making and recording of town plats, the interest in and control of the United States over the streets, alleys, and commons in the Fort Dearborn addition to Chicago ceased with the record of the plat thereof and the sale of the adjoining lots.

"When a resort is made by individuals, or by the Government of the United States, to the mode provided by the statute of a State where real property is situated, for the transfer of its title, the effect and conditions prescribed by the statute will apply, and such operation will be given to the instrument of conveyance as is there designated."

United States v. Ill. Central R. R. Co., 154 U. S. Rep., p. 225.

22 This view was given effect in United States v. Fox, 94 U. S. 316, where it was held that the United States could not take a devise of lands in New York where the statutes of that State provided that only "such corporations as are created under the laws of the State and are authorized to take by devise" could take a devise of lands.

See also, Levy v. Levy, 33 N. Y. 97; in re. Merriam Est., 36 N. E. 506.

For the same reason that any other person is bound, the Government is bound.

The Trigg Company was without power to so contract as to grant right in the vessel good as against creditors. A contract good as to creditors can come into existence only by the recordation thereof. Nor even then, if inconsistent—as here—with lien statutes.

In order that the contract be good against creditors, two factors must combine: 1st. The act of the William R. Trigg Company, the grantor. 2d. Recordation.

Under the fifth assignment of error it was demonstrated that as to creditors, the contract has no existence or validity whatever until its recordation.

No act of the grantor will suffice to divest it of its estate. Despite his act the law continues the ownership of the grantor as a trust fund for the benefit of his creditors. A trust that cannot be secretly divested.

By the contract of sale with the William R. Trigg Company, the United States Government took all right which that company could grant, but it took only such right as that company could grant, which was merely its interest in the fund after its creditors had been satisfied. It was not within the power of the company to prevent the operation of a statute of Virginia. The creature is not greater than the creator. The citizen cannot be greater than the law.

It may be claimed with some show of reason, that after the United States has become invested with the right of property within the State, the State laws cease to bind such property.

But in the case at bar it is important to observe that the operation of section 2465 is not to divest a vested right for a failure to
23 record, but it makes the act of recordation an essential to the divestiture of title of the vendor, and the vesting of the title in the vendee. It was upon precisely this distinction that the United States was held liable to an inheritance tax imposed by the State of New York.

"The law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and terms within which property, real and personal, within its dominion may be transferred by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. * * * If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interest or policy." To the same effect is *United States v. Fox*, 94 U. S. 315.

We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it.

United States v. Perkins, 163 U. S. 629-630.

"The question was whether property bequeathed to the United States could be lawfully included in a succession tax. It was decided that it could be. In the opinion, delivered by Mr. Justice Brown, it was said (p. 628, L. Ed., p. 288, Sup. Ct. Rep., p. 1075) :

“The tax is not upon the property in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee.”

Again (p. 629, L. Ed., p. 288, Sup. Ct. Rep., p. 1075) :

“That the tax is not a tax upon the property itself, but upon its transmission by will or descent, is also held, both in New York and in several other States.”

Yet again (p. 630, L. Ed., p. 289, Sup. Ct. Rep., p. 1075) :

“We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the
24 property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it.”

Knowlton v. Moore, 20 Sup. Ct. Rep., 752-753.

“The title in this property is held by the United States merely as if it were an ordinary purchaser without the authority of a sovereign over it, or the prerogatives of a sovereign to protect it.”

Lee v. Kaufman, Fed. Cas. No. 8191; 15 Fed. Cases, p. 192.

As to the supply lien creditors in this proceeding, in the absence of recordation the status of the property is precisely what it would be if no contract had been made. No right as against creditors ever vested in the United States.

See also March, Price & Co. v. Chambers & al., 30 Grattan, 304.

Dobyn's Adm'x v. Waring & als., 82 Va., 169.

Price v. Wall, 97 Va., 336.

It was precisely upon this distinction that the law operated before an investiture of title that the United States was held liable to an inheritance tax imposed by the State of New York.

“The law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and terms within which property, real and personal, within its dominion may be transferred by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. * * * If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interest or policy.’ To the same effect is United States v. Fox, 94 U. S., 315.

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25 that the legislature assents to a bequest of it.”

United States v. Perkins, 163 U. S., 629-630.

It would seem, even at the common law, with its exaggerated respect for the dignity of the sovereignty and his prerogatives, that recording statutes would bind the sovereign even though a particular statute might work a divestature of the sovereign.

The object of recording statutes are to prevent fraud and deceit operating to the injury of creditors and subsequent purchasers.

Montgomery v. Wright, 8 Mich., 147-148.

Stewart v. Platt, 101 U. S., 737.

V. Alienation—Registry of Conveyances. 2 Minor's Inst., 943-944-945.

The general rule that the sovereign was not bound by acts of parliament unless specially named, was subject, among other exceptions, to statute designed to prevent fraud.

"But if the statute be intended to give a remedy against a wrong, to prevent fraud (*italics RGB*), tortious usurpations, or the decay of religion, the King, though not named, shall be bound by it. So, the King, though not specially named, is bound by acts for the advancement of religion or of learning, or for providing for the poor; as by the act 10 Car. for uniting livings in Ireland. So the general words of the statutes which tend to perform the will of the founder or donor, shall bind the King, although he be not named. These instances, which are adduced in the books as exceptions to the rule, certainly open the door to great latitude of construction, and leaves the rights of the Crown very unsettled in such matters. Yet the authorities which support the doctrine are mostly taken from times in which the prerogative was highly favored. They are collected in the case of Willion v. Berkley. It was there held, by the Court of Common Pleas, that the King was bound by the Stat. de donis.

It was said in the Magdalen College case that where the King has any prerogative, estate, right, title, or interest; that by the general words of an act of parliament, he shall not be barred of them. In

26 later instances the claim is only asserted, that the King shall not be divested of any of his prerogatives, but by plain and express words for that purpose, though all his other rights are no more favored in law than the rights of his subjects. The sensible conclusion seems to be, that in such cases he may be precluded of such inferior claims as might belong indifferently to the King or to a subject (as the title to an advowson or to a landed estate) but not stripped of any part of his ancient prerogative, nor of those rights which are incommunicable, and are appropriated to him as essential to his regal capacity."

Potter's Dwarrris on Statutes, p. 151-152.

U. S. v. Knight, 14 Peters, 315; Plow, 139-137, in Lord Berkeley's case, 11 Co., 68b; 5 Co., 14; 7 Co., 32; 8 Bacon's Abridgment, 92.

"So the King, though not named, is bound by the 27 Eliz., c. 4, against voluntary conveyances to defraud purchaser; so that a voluntary conveyance to the King is as much void against a subsequent purchaser for a valuable consideration, as in the case of a common person. 11 Co., 74b."

8 Bacon Abridgement, p. 923.

U. S. v. Herron, 20 Wall., 255.

U. S. v. Titlow, 28 F. C., 46

King v. Wright, 28 Eng. Com. Law, 120.

Broom's Legal Maxims, page 73.

This is not a case in which there is a lien for taxation fixed by federal statute as was the case in *United States v. Snyder*, 149 U. S. 110, upon which appellants rely below.

In the case at bar there is no federal statute involved. The right of the Government is contractual merely.

The attention of the court is respectfully directed to the fact that the right which the Government relies on in this case involves no element of sovereignty—it simply relates to a collateral security for a debt.

"The United States, when they contract with their citizens are controlled by the same laws that govern citizens in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them."

United States v. Bostwick, 94 U. S., p. 66.

27 "In *Smoot's case*, 15 id., 47, that the principles which govern inquiries as to the conduct of individuals in respect to their contracts, are equally applicable where the United States are a party."

United States v. Smith, 94 U. S., p. 217.

"We understand the law to be that 'when a government enters into a contract with an individual it deposes, as to the matter of the contract, its constitutional authority and exchanges the character of a legislator for that of a moral agent, with the same rights and obligations as an individual.' (3 *Hamilton's Works*, 518; *United States v. Bank of Metropolis*, 15 Pet., 392; *Deming v. United States*, 1 C. Cls. R., 191). If there are exceptions to the rule just stated they do not apply to this action."

The Southern Pacific Co. v. the United States, 28 Court of Claims, p. 105.

"When the Government enters into a contract it lays down its constitutional authority, and has only the same rights and is subject to the same obligations as an individual. *Southern Pacific Co.'s case*, p. 77."

28 Court of Claims, p. 584.

"The rule regarding the effect to be given to a written contract when the United States are a party is the same as between man and man."

Gilbert v. United States, 1 Court of Claims, p. 28.

"The law, as we understand it, was stated by *Hamilton* in these words: 'When a government enters into a contract with an individual it deposes, as to the matter of the contract, its constitutional authority and exchanges the character of a legislator for that of a moral agent

with the same rights and obligations as an individual.' (3 Hamilton's Works, p. 518). * * *

Nor are we aware of any statute or judicial decision which excepts known usage or custom from contracts made with the Government.

So, applying the general rule referred to, we must hold (1) that a contract made with the Government, unless in conflict with some statute, is controlled by the general law that controls as between individuals; (2) that if at the time of the execution of such contract there exists a well-known general custom, such custom is by implication incorporated into the agreement, 'if nothing is said to the contrary.'"

Thomas H. Lyons v. United States, 30 Ct. Cl. Rep., 360-361-362. See also, Denning's case, 1 Court of Claims, 191.

Wilson's case, 11 Court of Claims, 520.

Southern Pacific case, 28 Court of Claims, 77-105.

Robinson v. U. S., 13 Wall., 363.

"The United States, in relation to the proprietorship of real or personal property, have, in their public capacity, like authority and remedies, and are subject to like liabilities in dealing with it, through legal agencies, or otherwise, as natural persons, except, perhaps, in respect to the operation of laws of limitation, or rules resting upon usages under the law merchant. U. S. v. Tingey, 5 Pet. (30 U. S.), 115; Same v. Bradley, 10 Pet. (35 U. S.), 343; Same v. Bank of Metropolis, 15 Pet. (40 U. S.), 377; Dungan v. U. S., 3 Wheat. (16 U. S.), 172; Nielson v. Lagow, 12 How. (53 U. S.), 98; U. S. v. Barker, 12 Wheat. (25 U. S.), 559; Same v. Bank of U. S., 5 How. (46 U. S.), 382."

Case No. 4318, 8 Fed. Cas., p. 389.

In the case of Jones v. United States, 1 Court of Claims, 384, there was a contract made with two civil engineers for the survey of the districts fixed in the treaty with the Choctaw Indians. The engineers contended that the United States had "obstructed" by certain general laws thereafter passed. The court declares:

"This position can not be sustained. The two characters which the Government possesses as a contractor and sovereign can not be thus fused, nor can the United States, while sued in one character, be made liable in damages for their acts done in the other. * * *

"This distinction between the public acts and private contracts of the Government—not always strictly insisted on in the earlier days of this court—frequently misapprehended in public bodies, and constantly lost sight of by suitors who come before us, we now desire to make so broad and distinct that hereafter the two can not be confounded; and we repeat, as a principle applicable to all cases, that the United States as a contractor can not be held liable

directly or indirectly for the public acts of the United States as a sovereign."

Jones v. United States, 1 Court of Claims, p. 385.

It is bound as an individual would be bound.

"As proprietor within a State subject to state laws.—Where the United States owns lands situated within the limits of a particular State, and over which it has no cession of jurisdiction, for objects either special or general, little doubt exists that the rights and remedies in relation to it are usually such as apply to other landowners within the State.

U. S. v. Ames, 1 Woodb. & M. (U. S.), 76; *v. Chosby*, 7 Cranch (U. S.), 115; *New Orleans v. U. S.*, 10 Pet. (U. S.), 662."

27 Amer. & Eng. Ency. of Law, p. 531.

"The underlying principle of all the decisions is that when the sovereign comes into court to assert a pecuniary demand against the citizen the court has authority, and is under the duty, to withhold relief to the sovereign except upon terms which do justice to the citizen or subject, as determined by the jurisprudence of the forum in like subject-matter between man and man."

Walker v. U. S., 139 Fed., 413.

"This court, in the *United States v. Mitchell*, 9 Peters, 743, have recognized the principle in the common law, that though the law gives the king a better or more convenient remedy, he has no better right in court than the subject through whom the property claimed comes to his hands. 2 Co. Inst., 573; 2 Ves. Sen., 296, 297; Hard., 60, 460. This principle is also carried into all the statutes, by which the appropriate courts are authorized to decide, and under which they do decide on the rights of a subject in controversy with the king, according to equity and good conscience between subject and subject. 7 Co., 19; 6 Hard., 27, 170, 230, 502; 4 Co. Inst., 190."

Brent v. The Bank of Washington, 10 Peters, p. 614.

The fact that some of these vessels were intended for war ships can in no way affect the question. The contract was made by the

30 William R. Trigg Company with reference to property which it had or which it might thereafter acquire, upon the transfer of which property both the recordation and supply lien statutes impose certain precedent conditions.

It was observed by Judge Bigelow, in the case of *Briggs v. Life Boat*, hereinafter cited, where the magic of sovereignty was resorted to to confuse the vision of the court:

"If the property in the ship or vessel is not changed, if it still remains in the builder, it is difficult to see how the use or purpose for which a vessel or ship is destined when completed, can in any way interfere with or control the right of the owner to dispose of it while the title and possession are both vested in him."

Briggs v. Life Boat, 7 Allen, pp. 296-297.

The United States was contracting with a corporation of the State of Virginia, whose powers were derived from the State and whose disabilities were fixed by the State. The Government, therefore,

necessarily derives its right from the ultimate source of such rights, namely, the State statutes.

"Under the operation of the act of the legislature of Illinois of February 27, 1833, for the making and recording of town plats, the interest in and control of the United States over the streets, alleys, and commons in the Fort Dearborn addition to Chicago ceased with the record of the plat thereof and the sale of the adjoining lots.

When a resort is made by individuals, or by the Government of the United States to the mode provided by the statute of a State where real property is situated, for the transfer of its title, the effect and conditions prescribed by the statute will apply, and such operation will be given to the instrument of conveyance as is there designated."

United States v. Ill. Central R. R. Co., 154 U. S. Rep., p. 225.

Tenth assignment of error.

The court erred in sustaining the exceptions of the United States Government, by L. L. Lewis, its attorney, and the Virginia Trust Company, to the report of Commissioner Massie, and in modifying the said report, in the several particulars appearing in the said decree; and referred to in this petition under the seventh, eighth, and ninth assignments of error, and court further erred in failing to overrule the said exceptions and sustain the said report.

30a In addition to what was said under the fifth and ninth assignments of error on this subject, the appellant supply lienors respectfully submit that the authorities cited in this petition, Record pages 39-42, inclusive, show that the status of the United States in this proceeding is that of an equitable mortgagee. By the provisions of section 2465, recordation is necessary to pass from the mortgagor a title to the thing mortgaged, good as against creditors. Equitable mortgages are within the scope of this act.

Battison v. Hobson (1896), 2 Ch. 403; Pierce v. Jackson, 56 Ala. 599; O'Neil v. Seixas, 85 Ala. 80, overruling dictum in Bailey v. Timberlake, 74 Ala. 221; Putnam v. White, 76 Me. 551; Alderson v. Ames, 6 Md. 52; General Ins. Co. v. U. S. Ins. Co., 10 Md. 517, 69 A. Dec. 174; Edwards v. McKernan, 55 Mich. 520; Clamorgan v. Lane, 9 Mo. 446; Carter v. Holman, 60 Mo. 498; Crane v. Turner, 7 Hun (N. Y.), 357; Tefft v. Munson, 65 Barb. (N. Y.) 31, 57 N. Y. 97; Tarbell v. West, 86 N. Y. 280; Todd v. Outlaw, 79 N. Car. 235; Russell's App. 15 Pa. St. 319; Butler v. Maury, 10 Humph. (Tenn.) 420; 24 Amer. & Eng. Ency. L. p. 81. See also The Vigilancia, 68 Fed. Rep. 784; Hill v. Marsden, 178 Mass. 285; Sidenback v. Riley, 111 N. Y. 560; Byrd v. Wilkinson, 4 Leigh, 266; Jarvis v. Dutcher, 16 Wis. 307.

"The plaintiff argues that the agreement could not be recorded; that, if it had been kept, presumably the mortgage would have been recorded; and that the equitable lien or trust which he is seeking to establish is not subject to the registration laws. But the equitable interest must follow the contract upon which it is founded, and there-

fore the plaintiff's position must be that, in equity, he is to be regarded as a mortgagee, and the trouble is that an unrecorded mortgage of chattels remaining in the possession of the mortgagor is void as against any person other than the parties thereto, by the express words of Pub. St. c. 192, sec. 1. The law is different as to mortgages of land (Id. c. 120, sec. 4): and therefore Pinch v. Anthony, 8 Allen 536, which enforced a written agreement for security against a purchaser of the land concerned, with notice, has no bearing upon the present case. Huntington v. Clemence, 103 Mass. 482, shows that an agreement like the present would not be enforced at law against attaching creditors. The policy of the statute to secure publicity is not affected by the question whether the proceedings are at law or in equity (Blanchard v. Cook, 144 Mass. 207, 226, 11 N. E. 83): and its words admit of no exception on the ground that the purchaser has notice (Bingham v. Jordan, 1 Allen, 373, 374). We are of opinion that an unrecorded agreement to give a chattel mortgage stands no better than an unrecorded mortgage, as against the purchaser of the goods. It is unnecessary to consider other objections to the plaintiff's case. Bill dismissed."

Smith v. Howard, 53 N. E. Rep. 143-144.

31 This assignment is fully argued under the remaining other assignments herein, to which reference is here made.

Eleventh assignment of error.

The court erred in declaring that the United States Government was entitled to a lien upon the unfinished revenue cutter "Mohawk," its materials, etc., for amounts paid by the United States thereon prior in time and in right to the liens of the supply creditors of the said William R. Trigg Company.

The contract for the "Mohawk" provided that the Government should have a lien upon the hull, etc., and materials on hand, for all moneys which the Government might choose to advance during the course of her construction, such lien to attach from time to time when further payments were made.

It was conceded below, and undoubtedly will again be conceded on this appeal, that the property in the revenue cutter was in the Trigg Company, but the court below decided, and appellees will contend here, that the fabric and materials were subject to the lien reserved in the contract. This lien varies only from that reserved in the contract for the "Galveston" in the fact that the "Mohawk's" lien was stipulated for in the contract in consequence of an authority and a direction contained in the statute of the United States that the contract should contain such a provision, whereas in the case of the "Galveston," there is no such authority nor direction.

The statute referred to is as follows:

"That the Secretary of the Treasury be, and he hereby is, authorized to make partial payments, from time to time, upon existing contracts and all contracts hereafter made for the construction of vessels

for the Treasury Department, but not in excess of seventy-five per cent of the amount of the value of the work already done; and that the contracts hereafter made shall provide for a lien upon such vessels for all advances so made; provided, that nothing in this joint resolution shall be construed to hereafter authorize any partial payments, except on contracts stipulating for the same, and then only in accordance with such contract stipulation."

28 Statutes at Large, 582-583.

32 In the court below it was contended that this statute converted the contract lien into a statutory lien. The error of this view is apparent upon a reading of the statute. It simply directs the Secretary of the Navy as to provisions which shall be inserted in a contract, and it is manifestly intended to secure simply such a contractual lien as the contract can give. It authorizes the Secretary of the Treasury to make partial payments on vessels thereafter to be constructed—it does not require him to do so—but it does require him where a contract for payment by instalments is made, to therein provide for a lien. This statute does not create a lien.

If Congress had chosen to provide by statute for a lien in favor of the Government on account of advances made during the construction of ships, the case would be quite different. The cited statute, however, shows no such intention.

It is to be observed that the contract for the "Mohawk" does not oblige the Government to make partial payments—such payments were at the sole option of the Government.

The remaining questions being similar to those which arose under the "Galveston" contract, they will be argued under the twenty-fourth assignment of error, to which the attention of the court is respectfully directed.

Twelfth assignment of error.

The court erred in declaring that the United States had the right at the time of the delivery of the "Mohawk," under the Government's stipulation, to take possession of, and complete the vessel at the cost of the Trigg Company.

The provision of the contract in question is:

"In case of the neglect or failure of the said party of the first part to fulfill the stipulations of its part of the contract, then the Secretary of the Treasury is authorized to direct purchases to be made of all necessary materials, and cause the construction of the vessel to be completed as herein specified and required," the Trigg Company to be liable to the United States for excess of cost so caused.

There is no evidence that up to the time of the attaching of the supply liens, that there had ever been any default in the construction of the "Mohawk," nor does the opinion so hold. The opinion makes the right of the United States to the possession of the

33 "Mohawk" to date from the time of the delivery of that vessel. that delivery occurred many days after the filing of the supply liens in this cause. At the time of the filing of these liens

no possession of the vessel had ever passed to the United States and no act had ever been done which entitled the United States to the possession.

At the time the supply liens attached, therefore, the United States had neither the possession of the vessel nor the right to possession, nor a property therein, nor a right of property therein. The sole rights possessed by the United States were contractual. The contractual rights of the United States were, as will be shown hereafter in the twenty-fourth assignment of error, subordinate to the rights of the supply lienors.

"And now it is claimed that the iron works, having given notice on November 1st, of its inability to further proceed with the contract, that the vessel is, by reason of that fact, in the possession of the U. S. since that date. The U. S. is not bound, in case of the failure of the contractor, to take possession of and complete the vessel. It has the option, and it *made* do so, or it may elect to rely upon its bonds or the liability of the contractor or both. Up to the time of the seizure it had done nothing toward the exercise of this option. * * * So far as appears from the evidence, the U. S. by these telegrams first attempted to exercise its option under the contract and take possession and complete the vessel. But in the meantime she had been taken possession of by the marshall under the process of this court as the property of and in the possession of the iron works, at the suit of citizens who have a valid and subsisting lien upon her for materials made and used in her equipment and furnished by them at the request of the builder while she was in the possession of the latter, and doubtless upon the faith of such security. If, under these circumstances, the U. S. desired to get possession of the vessel for the purpose of completing her and protecting its interests therein, it is meet and right, and so is the law, that it shall first satisfy this lien of the libellants."

"But even supposing that the United States had exercised its option before the seizure herein and was then engaged in completing the vessel under the contract with the iron works, I seriously doubt whether its possession would be sufficient to defeat this suit. As against the libellants, its possession, it appears to me, would be merely that of the iron works, for whom and on whose account it was finishing the vessel in a certain contingency expressly provided for in the contract."

34 Revenue Cutter No. 2, Fed. Cas. No. 11714, 20 Fed. Case, 573.

See following authorities:

C. C. McGowan, *Adm'x v. U. S.*, 35 Court of Claims, 621.

The Revenue Cutter No. 2, Fed. Case No. 11714.

Thirteenth assignment of error.

The court erred in declaring that the lien reserved to the United States in the contract for the "Mohawk" was a valid lien against the supply lienors.

At most the lien is an equitable lien. Whether the lien in the contract for the "Mohawk" is even an equitable lien is very questionable.

The attention of the court is directed to the fact that the Government was under no obligation to make partial payments on the "Mohawk"—the making of such payments being entirely optional with the Government.

The appellants deny the validity of the lien of the Government, and the argument and authorities in support of this denial appear under the preceding assignments of error and also under assignments of error twenty-four.

Fourteenth assignment of error.

The court erred in declaring that the contract for the "Mohawk" and the lien therein declared, is not affected by the recordation statutes of the State of Virginia.

Appellant contends that the contract is affected by the recordation statutes of the State of Virginia, and respectfully refers the court to the fifth and ninth assignments of error, under which the supporting argument appears.

Fifteenth assignment of error.

The court erred in declaring that the lien reserved in the "Mohawk" contract "is prior in time and right to the liens of the labor and supply creditors of the William R. Trigg Company and that such supply liens can have effect only upon the balance, if any, ascertained to be due by the United States to the said William R. Trigg Company upon the completion of the vessel."

35 This is practically the same as the thirteenth assignment of error hereinbefore referred to. The argument and authorities in support of this denial appear under assignment of error twenty-four.

Sixteenth assignment of error.

The court erred in failing to decide at what time the lien of the Government attached to the incomplete "Mohawk."

The argument supporting this assignment is to be found under the twenty-fourth assignment of error.

Seventeenth assignment of error.

The court erred in sustaining the exceptions of the Virginia Trust Company and the United States to the report of Commissioner Massie and amending the said report as to the Revenue Cutter "Mohawk," as in the said decree appears.

Eighteenth assignment of error.

The court erred in declaring that under the contract for the construction of the cruiser "Galveston," the United States, because of the default of the said William R. Trigg Company, having declared said contract forfeited, had before and at the time of the delivery above mentioned, a lien upon the unfinished cruiser, its hull and materials assembled, etc., for the partial payments made under the contract, and that the said lien so reserved to the United States is valid.

The argument of this question will be found under the twenty-fourth assignment of error, to which the attention of the court is invited.

Nineteenth assignment of error.

The court erred in declaring that the United States had the right at the time of the delivery of the "Galveston" under the Government's stipulation to take possession of and complete the vessel at the cost of the William R. Trigg Company.

This involves the same question as that presented in the
 36 twelfth assignment of error, and the argument of this assignment will be found under the twenty-fourth assignment of error.

Twentieth assignment of error.

The court erred in not declaring that the lien, if any, to which the United States was entitled was void for failure to record.

This has been fully argued under the fifth and ninth assignments of error, to which the attention of the court is respectfully directed.

36a Appellants do not desire to waive, but on the contrary, insist upon the provision of the supply lien statute (section 2485), requiring recordation, so far as the same can apply to the cases in this petition presented.

Twenty-first assignment of error.

The court erred in failing to hold that the contract for the "Galveston" should have been recorded under the Virginia law, and until so recorded, was invalid as to creditors.

This has been fully argued under the fifth and ninth assignments of error, to which the attention of the court is respectfully directed.

Twenty-second assignment of error.

The court erred in failing to decide at what time the lien of the Government attached to the incomplete "Galveston."

This is a manifest omission, but perhaps not injurious; it is believed that whenever, if ever, the lien attached, it attached to the

estate in the vessel remaining after the satisfaction of the supply lienors. This was not only the legal effect of the contract, but the intent of the parties plainly expressed on the face of the contract.

See argument under the twenty-fourth assignment of error.

Twenty-third assignment of error.

The court erred in failing to declare that sections 3753 and 3754 of the Revised Statutes of the United States contemplate that controversies between the Government and private persons respecting property in which the United States has an interest or claim and that the true and proper construction of the said sections was to permit the litigation of such questions in like manner and under the same rules of law as would apply in a similar contest between individuals, and that in such a case as that at bar the rights of the United States under the said section are in no way extended by its sovereignty.

Twenty-fourth assignment of error.

The court erred in failing to declare that any lien to which the United States was entitled was invalid as against supply lienors, in that the liens of the supply lienors had attached.

The contract for the "Galveston," like that of the "Mohawk," provided for a lien for instalment payments made by the Government during construction. No further specific provisions are made in the "Mohawk" contract, but the "Galveston" contract declares that when the Government declares the contract forfeited, the lien to which it is entitled shall be as "collateral security" for the refund of the instalments.

In the case of the "Galveston," the payment of instalments by the Government, as well as the contract for a lien therefor, seems to have been without authority.

See Vol. 1, Gould & Tucker's Notes on Revised Stat. 720.

It appears that the Secretary of the Navy declared the contract forfeited and seized the vessel as a collateral security for the indebtedness which the Government declared against the William R. Trigg Company under certain provisions of the contract.

The court below regarded these provisions of the contract as to machinery for foreclosing the lien given by the eighth section.

The language of the contract does not seem to justify this assumption—it plainly indicates that after the declaration of forfeiture, the only lien on the ship which the Government has is that of a collateral security for a debt.

The possession of the vessel remained with the William R. Trigg Company. The right of the Government against the vessel is, therefore, analogous to the hypotheca of the civil law.

38 "Hypothecation" is a term of the civil law, and is that kind of pledge in which the possession of the thing pledged re-

mains with the debtor, the obligation resting in mere contract without delivery, and in this respect distinguished from 'pignus,' in which possession is delivered to the creditor or pawnee.

Whitney v. Peay, 24 Ark. 22 (citing Burrill, Law Dict.; Story, Bailm., sec. 288.)

4 Words & Phrases, 3377.

Under our system of laws the condition which, under the civil laws, worked a hypothecation results in an equitable lien.

"It is necessary to divest one's self of the purely legal notion concerning the effect of such contracts, and to recognize the fact that equity regards them as creating a charge upon or hypothecation of the specific thing, by means of which the personal obligation arising from the agreement may be more effectively enforced than by a mere pecuniary recovery at law."

3 Pomeroy's Equity Jurisprudence, p. 2469.

"The equitable lien is strictly analogous to, and is undoubtedly derived from, the hypotheca of the Roman law. Hypotheca was the right given to a creditor over a thing belonging to another, in order to secure the payment of a debt, while the property and possession remained in the debtor. It was thus distinguished from pignus, in which possession was delivered to the creditor, and he thus acquired a special property. Hypotheca was generally created by agreement, express or implied, between the parties; but in some cases it was created by operation of law, and then called hypotheca tacita, as over the property of a tutor in favor of his ward, and in favor of a wife over her dowry in the hands of the husband. See Sandar's Inst. of Justinian, 205, 206."

3 Pomeroy's Equity Jurisprudence, p. 2466 (f. n. 3).

An equitable lien is the same as an equitable mortgage.

"Any writing charging a debt on property though not a formal mortgage, is an equitable mortgage or lien."

Freely v. Bryan, 47 S. E. 307 (W. Va.).

39 "Flagg v. Mann, 2 Sum. 486, 533, Fed. Cas. No. 4847, per Story, J.: 'If a transaction resolve itself into a security, whatever may be its form, and whatever name the parties may choose to give it, it is in equity a mortgage (lien).'"

3 Pomeroy Eq. Jur., p. 2473.

"Sec. 1233. What are included in this term—What is an equitable lien.—Analogous to mortgages considered from the purely equitable point of view are the important class of interests embraced under the denomination of 'equitable liens'; and I include within this general term those interests which are not regarded by the American jurisprudence as true mortgages, but which are commonly called by English writers and judges 'equitable mortgages.' An equitable lien is not an estate or property in the thing itself, nor a right to recover the thing—that is, a right which may be the basis of a possessory action; it is neither a jus ad rem nor a jus in re. It is simply a charge or encumbrance upon the thing, so that the very

thing itself may be proceeded against in an equitable action, and either sold or sequestered under a judicial decree, and its proceeds in the one case, or its rents and profits in the other, applied upon the demand of the creditor in whose favor the lien exists. It is the very essence of this condition that while the lien continues the possession of the thing remains with the debtor or the person who holds the proprietary interest subject to the encumbrance. The equitable lien differs essentially from the common-law lien, which is simply a right to retain possession of the chattel until some debt or demand due to the person thus retaining is satisfied; and possession in such an inseparable element, that if it be voluntarily surrendered by the creditor, the lien is at once extinguished."

3 Pomeroy's Eq. Jur. 2465, sec. 1233.

Such a lien was void as to third persons at common law.

"By the general rule of common law, upon a transfer of goods, whether absolute or conditional, as against third persons, there must be a delivery, and in general also, the custody and possession of the goods must be retained by the vendee. It seems to have been the intent of this statute to enable the owners of personal property to make valid transfer, by way of mortgage or conditional sale, to stand
40 well as against the mortgagors and their heirs, and yet to enable such mortgagors to have the possession and use of the goods until condition broken. For this purpose registration is required as giving equal and perhaps greater notoriety to the transaction, than delivery and retaining possession."

Bullock v. Williams et al., 33 Mass., p. 34.

"The mortgage on a vessel on the stocks without possession will not avail, by way of hypothecation against attaching creditors."
Goodenow v. Dunn, 21 Maine, 86."

7 Bacon's Abridgement, p. 181.

Indeed, there is a preponderance of authority that there is no lien as between the parties themselves.

"Although formerly there was very little disagreement among the authorities in regard to the propositions that to complete a pledge the pledgee must take possession, and that to reserve the pledge he must retain possession, in late years there has been a growing laxity on the part of the judges and jurists, and there are authorities of great weight and responsibility holding that as between parties themselves an actual delivery may not be necessary and that the possession may be regarded constructively where the contract places it. However, the authorities seem to preponderate in support of the proposition that not only as against creditors and third persons, but even as against the pledgor, there can be no valid contract of pledge unless the property is delivered."

Pledge and Collateral Security, 22 Amer. & Eng. Ency. of Law, pp. 853-4-5.

As between the parties equity gives effect to such contracts though the law refuses to recognize them.

“Sec. 1234. Origin and Rationale of the Doctrine.—The doctrine of equitable liens is one of great importance and of wide application in administering the rights and remedies peculiar to equity jurisprudence. There is perhaps no doctrine which more strikingly shows the difference between the legal and the equitable conceptions of the judicial results which flow from the dealings of men with each other, from their express or implied undertakings. A brief explanation of the foundation and reasons upon which this branch of the equity jurisprudence rests is essential to a full understanding of the subject. It is sometimes, although I think unnecessarily and even incorrectly, spoken of as a species of implied trusts. If any reference to the theory of trust is made, it is more accurate to describe these liens as analogous to trusts; for while the two have some similar features, they are unlike in their essential elements. The common-law remedies upon all contracts except those which transfer a legal estate or property, such as conveyances of land and sales or bailment of chattels (“real” contracts, *contractus reales*), are always mere recoveries of money; the judgments are wholly pecuniary and personal, enforced in ancient times against the person of the judgment debtor by imprisonment, and in modern times against his property by means of an execution. This species of remedy is seldom granted by equity, and is opposed to its general theory. The remedies of equity are, as a class, specific. Although it is commonly said of them that they are not in rem, because they do not operate by the inherent force of the decree in an equitable suit to change or to transfer the title or estate in controversy, yet these remedies are, as a general rule, directed against some specific thing; they give or enforce a right to or over some particular thing—a tract of land, personal property, or a fund—rather than a right to recover a sum of money generally out of the defendant’s assets. Remedies in equity, as well as at law, require some primary right or interest of the plaintiff which shall be maintained, enforced, or redressed thereby. When equity has jurisdiction to enforce rights and obligations growing out of an executory contract, this equitable theory of remedies can not be carried out, unless the notion is admitted that the contract creates some right or interest in or over specific property, which the decree of the court can lay hold of, and by means of which the equitable relief can be made efficient. The doctrine of ‘equitable liens’ supplies this necessary element; and it was introduced for the sole purpose of furnishing a ground for the specific remedies which equity confers, operating upon particular identified property, instead of the general pecuniary recoveries granted by courts of law. It follows, therefore, that in a large class of executory contracts, express and implied, which the law regards as creating no property right, nor interest analogous to property, but only a mere personal right and obligation, equity recognizes, in addition to the personal obligation, a peculiar right over the thing concerning which the contract deals, which it calls a ‘lien,’ and which though not property, is analogous to property, and by means of which the plaintiff is enabled to follow

42 the identical thing, and to enforce the defendant's obligation by a remedy which operates directly upon that thing. The theory of equitable liens has its ultimate foundation, therefore, in contracts, express or implied, which either deal with or in some manner relate to specific property such as a tract of land, particular chattels or securities, a certain fund, and the like. It is necessary to divest one's self of the purely legal notion concerning the effect of such contracts, and to recognize the fact that equity regards them as creating a charge upon or hypothecation of the specific thing, by means of which the personal obligation arising from the agreement may be more effectively enforced than by a mere pecuniary recovery at law."

3 Pomeroy's Eq. Jur., 2466-2467-2468-2469, sec. 1234.

But such liens have never been allowed as against creditors whose liens have attached.

"It is clear that if the express intention of the parties was to create an equitable lien upon the bonds or the value thereof, or if such intention arises by a necessary implication from the terms of the agreement, construed with reference to the situation of the parties at the time of the contract, and by the attendant circumstances, such equitable lien will be enforced by a court of equity against the bonds in the hands of Brown or against third persons who are volunteers or have notice. It is well settled, said the court in *Pinch v. Anthony*, 8 Allen, 536, "that a party may, express agreement, create a charge or claim in the nature of a lien on real as well as on personal property of which he is the owner or in possession, and that equity will establish and enforce such charge or claim, not only against the party who stipulated to give it, but also against third persons, who are either volunteers or who take the estate on which the lien is agreed to be given with notice of the stipulation." The subject was very fully reviewed with reference to the English and American authorities in *Ketchum v. St. Louis*, 101 U. S. 306, where the language just cited was approved; and that ruling was considered and affirmed during this term in *Bank v. Yardley*, 165 U. S., 634, 17 Sup. Ct., 439."

Walker v. Brown, 17 Sup. Ct., 457.

Equitable liens have never been held good as against the lien of creditors which have attached.

43 See *Hauselt v. Harrison*, 105 U. S., p. 401; *Gregory v. Morris*, 96 U. S. 619; *Ketchum v. St. Louis*, 101 U. S. 317.

"A. entered into a written contract with B., whereby, in consideration of moneys advanced by the latter for the purchase of skins, he agreed that he would tan, finish, and deliver them to B. B., in consideration of a commission on sales, and a further percentage to cover insurance, storage, and labor, agreed to sell them, and put the proceeds, less his commissions and advances, at the disposal of A. It was further agreed that all the skins, whether green, in the process of tanning, tanned or tanned and finished, should be considered as security for refunding the moneys advanced. The business was, for about six months, carried on until A. became unable, from sickness and financial embarrassment, to proceed with it, and he was then

indebted to B., who was aware of his condition. They, in order to carry out the first contract, entered into another, where B. was to take possession of A.'s tannery and run and use it with such materials there as would be necessary to finish and complete the skins, and sell them, the net proceeds to be put to the credit of A., after deducting expenses and advances. A., four days thereafter, filed his petition in bankruptcy. B. took possession of the tannery, and A.'s assignee in bankruptcy brought replevin for the skins. Held: 1. That A. had not an unqualified property in them, but they were subject to a charge in the nature of a mortgage in favor of B., which was binding on the parties and A.'s assignee in bankruptcy," but not against creditors whose liens have attached.

Hauselt v. Harrison, 105 U. S. 401-402-405.

Under provisions of bankrupt statutes, effect is sometimes given to such liens as against general creditors, because the assignee is successor only to the right of the bankrupt—the bankrupt being bound by the contract, the assignee and the creditors are also bound. The authorities cited distinguish between lien creditors and general creditors.

In the case at bar the creditors are lien creditors. They are not bound by the contracts of the debtor *Trigg Company*, because its lien is not dependent upon the rights of the debtor, the supply lien is created by law, not by the contract to supply material. In the capacity of lienors the supply people are not privy to the contracts of the *Trigg Company*.

44 "In the case at bar, there is no privity of contract between the libellants and the Government of the United States. The transaction was with, and the credit given to, *Merry & Gay*, and security for the debt obtained by a lien upon the vessel under and by virtue of the law of the sovereign State of Ohio."

The Revenue Cutter No. 1, 20 Fed. Cas., p. 563.

"It may be defined to be a claim created by law, for the purpose of insuring a priority of payment of the price and value of work performed and material furnished in erecting or repairing a building or other structure, and as such it attaches to the land as well as the buildings erected thereon. Now, it is not the contract for erecting or repairing the building which creates the lien, but it is the use of the materials furnished and the work and labor expended by the contractor, whereby the building becomes a part of the freehold, that gives the material man and laborer his lien under the statute. The lien is brought into operation by virtue of the statute, and the contract for building is entered into presumably in view of, or with reference to, the statute."

Breed v. Glasgow Inv. Co., 92 Fed., p. 766.

Withrow Lumber Co. v. Glasgow Inv. Co., 101 Fed. 868.

"A mechanic's lien is created by law, rather than by the contract."

20 Amer. & Eng. Ency. of Law, p. 349.

"This lien is a creature of the statute, and was not recognized at common law. It may be defined to be a claim created by law for

lien on all of its property and franchises in South Carolina, this must mean subject to the law now of force in this State. And as the law of 1882, then in force, provided that certain judgments obtained whenever a cause of action shall arise against any railroad corporation shall have lien which shall take precedence of any mortgage, this provision entered into the mortgage contract. The lien of the mortgage is declared subordinate to such judgment liens; and, in accepting the mortgage under these circumstances, the mortgagee gives his assent to this. The lien of the mortgage is not displaced. It is defined and restricted with full notice to the mortgage creditor. (*Italics RGB.*)

Central Trust Co. v. Charlotte C. & A. R. Co., 65 Fed., p. 259.

"The principle is concisely stated by Mr. Justice Curtis, in the case of *The Kearsage* (Case No. 7762), as follows: 'The mortgagees can have no claim to be preferred over the lien-holder, because of their priority in time; for their interest in the vessel is as much subject to the statute lien as the interest of any other party.'" This principle is recognized in the following cases: *The W. T. Graves* (Id. 17758); *Scott v. Delahunt*, 65 N. Y., 128; *The Island City* (Case No. 7109); *Donnell v. The Starlight*, 103 Mass., 227; *Hull of a New Ship* (Case No. 6859); *The Raleigh* (Id., 11539); *Shode v. The Collier*, 2 Pittsb. R., 304; *The St. Joseph* (Case No. 12229); *Kellogg v. Brennan*, 14 Ohio, 72; *Provost v. Wilcox*, 17 Ohio, 72; *Provost v. Wilcox*, 17 Ohio, 359; *Jones v. Kenn*, 115 Mass., 170."

The Hiawatha case No. 6453, 12 Fed. Cas., 110.

See also:

Atlantic Dynamite Co. v. Ropes G. & S. Co., 77 N. W., 939; *The Hull of a New Ship*, Case No. 6859, 12 F. C., p. 862.

By implication of law, the Government contracted with the Trigg Company with reference to those statutes which bound the Trigg Company, the supply lien statute among them.

The lien of the Government is not displaced by the supply lienors—the supply claims are entitled to priority over the Government not simply because the statute fixes a priority, but because the contractual lien of the Government was intended by the parties to be subject to liens under the laws of Virginia.

"It is true, that, according to the ruling in *Fidelity Trust Co. v. Shen. Valley R. R. Co.*, 86 Va., 1, there was no valid 'supply lien law' in Virginia before the code was enacted; but a sufficient answer to the position of the appellants is that the company took its charter subject to the general laws of the State, and to such changes as might be made in that law. *Penn. R. R. Co. v. Miller*, 132 U. S., 75. It can not be successfully contended," said the court in the Mackey case, "that the State may not prescribe the liabilities under which corporations created by its laws shall conduct their business in the future, where no limitation is placed upon its power in this respect by their charters." So, also, when the appellants took the bonds of the company, which were executed and secured in 1890, after the enactment

of the code, they were presumably cognizant of the law then in force giving a prior lien in cases of this sort, and they accepted the security with that legal incident adhering to it. (*Italics RGB.*) *Provident Institution v. Jersey City*, 113 U. S., 506. So that no amendment of the charter was necessary to bring the company within the operation of that law, nor does section 2485 of the code operate, nor was it designed to operate, as an amendment of the charter. *Anderson v. Commonwealth*, 18 Gratt., 295.

49 Va. Devel. Co. et al. v. Crozier Iron Co. et al., 90 Va. Rep., 132.

"It may be defined to be a claim created by law, for the purpose of insuring a priority of payment of the price and value of work performed and materials furnished in erecting or repairing a building or other structure, and as such it attaches to the land as well as the buildings erected thereon. Now, it is not the contract for erecting or repairing the building which created the lien, but it is the use of the materials furnished and the work and labor expended by the contractor, whereby the building becomes a part of the freehold, that gives the material man and laborer his lien under the statute. The lien is brought into operation by virtue of the statute, and the contract for building is entered into presumably in view of, or with reference to, the statute."

Breed v. Glasgow Inv. Co., 92 Fed., p. 766;

Withrow Lumber Co. v. Glasgow Inv. Co., 101 Fed. 868.

"The lien is brought into operation by virtue of the statute, and the contract is entered into presumably in view of, or with reference to, the statute."

Van Stone v. Stillwell & Bierce Mfg. Co., 142 U. S. Rep. 136.

To the same effect see, *Provident Inst. v. Jersey City*, 113 U. S. 514-515; *Oriental Hotel Co. v. Griffiths*, 53 Am. St. 797-98; *Central Trust Co. v. Charlotte*, 65 Fed. 259; *Commercial Life Ins. Co. v. Cushman*, 108 U. S. 64-65; *Southern Ry. Co. v. Bouknight*, 70 Fed. 446; *Brine v. Insurance Co.*, 96 U. S. 634; *Jones v. Great Sou. Fire Proof Hotel Co.*, 86 Fed. 387; *The Hiawatha*, 12 Fed. Cas. 110; *Atl. Dy. Co. v. Ropes Gold & Silver Co.*, 77 N. W. 939; *Smalley v. Gear-*
ing, 79 N. W. 1118.

If the supply lien statute is read into the contract, the contractual priority of the supply lienors is manifest.

There is more than an implication of law that the Government contracted with reference to the laws which bound the Trigg Company and by imputed intention took subject to the liens created by those laws.

The contract expressly recognizes that the lien which was given by the Trigg Company to the United States Government was subject, and was intended to be subject, to the lien laws of the State.

50 Other sections of the contract have been hereinbefore referred to—the sixth subdivision of the 18th section of the contract is as follows:

"When a payment is to be made under this contract, as a condition precedent thereto the Secretary of the Navy may in his discre-

tion require, for the protection of the party of the second part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights in rem of any kind against said vessel, or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired for or on account of any work done or any machinery, fitting equipment, or material already incorporated as a part of said vessel or on hand for that purpose, or that such liens or rights have either been released absolutely or so subordinated to the rights of the Government as to make its lien for all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel."

In an official opinion given to the Secretary of the Navy on June 21st, 1900, Attorney-General Griggs says, with respect to a contract almost identical with the "Galveston" contract, and similar in all essentials to the "Mohawk" contract, as follows:

"Accompanying your letter is the form of a contract used by the Navy Department in making contracts for the construction of naval vessels, which form has remained in use substantially unchanged since 1883. By the terms of this contract the contractor undertakes, at his own risk and expense, to construct, in conformity with drawings, plans, and specifications, the required vessel and to deliver the same at a specified place to such person as the Secretary of the Navy may designate. It is further provided in various clauses of the contract that the vessel shall not be accepted until after a specific trial, which can only be had after her full completion, and even then such preliminary acceptance is only conditional, the final acceptance being postponed to await the result of what is called a 'final trial.' The contract further provides that whenever a payment under it is to be made, as a condition precedent thereto, the Secretary of the Navy may, in his discretion, require evidence satisfactory to him to
51 be furnished by the contractor, that no liens or rights in rem of any kind against said vessel or her machinery, fittings, or equipment, or the materials on hand for use in the construction thereof have been or can be acquired for or on account of any work done or materials already incorporated as a part of said vessel or on hand for that purpose.

"I do not think the contract for the construction of a naval vessel, made in such form as I have referred to, is within the act of Aug. 13, 1894. The contracts there referred to relate to the construction of public buildings and the prosecution and completion of public works, and to repairs upon public buildings or public works. The object of the act was to afford a better method for enforcing against the contractor the claims of laborers and material men who had done work or furnished material upon property actually belonging to the United States, such as public buildings, which could only be erected upon land to which the United States had acquired a complete title—fortifications, river and harbor improvements, and such other

things as are commonly understood under the designation of 'public works.' Of course, no mechanic's or laborer's lien would attach, by operation of any state statute, to property belonging to the United States on account of work done or materials furnished for improvements thereon. The statute of 1894 intended, in a measure, to remedy the defect in the means of collection at the disposal of laborers and material men against contractors upon such works. No such reason applies to cases of the construction of a specific article not attached to soil, the title of which is in the United States, but which is a mere movable article, the whole title to which remains in the contractor until its completion and acceptance by the Government. I assume it to be correct to say that if a state law authorized a lien for labor or materials furnished in the construction of a vessel under this form of contract, it would not be void or unenforceable because the vessel was in process of construction for the United States, the property to the same not yet having passed to the Government, and such liens could therefore be effectively enforced. The clause of the contract referred to making it optional with the Secretary of the Navy to require evidence that no liens or right in rem of any kind exist against said vessel imports that such is the opinion of the Navy Department."

This opinion was cited approvingly by the Supreme Court 52 of Virginia, in the opinion of Judge Harrison, in *Penn. Iron Co. v. Wm. R. Trigg Company*, 56 S. E., p. 329.

The above opinion was a recognition of the Government of the priority to which liens under state laws are entitled—but most important, it fixed the construction of the contract, that in the intention of the contract the lien of the Government was subordinate to lienors under the state law.

It is not possible that there could be a document more conclusive of the intent of the contract than the above opinion. These contracts have been in use many years, and the Government is now estopped to claim in violation of its own construction.

United States v. Alabama R. Co., 142 U. S., 621;

Brawley v. United States, 96 U. S., 168.

The statutory enactment preceded in point of time the Government's contract, and the statute impressed with its own precedent lien the after acquired property of the William R. Trigg Company.

The sovereignty of one of the contracting parties cannot avail to extend the powers of the other party, especially if that other be a corporation.

If the William R. Trigg Company, a corporation created by the laws of the State and subject to its provisions, could on account of the sovereignty of the United States, be permitted to contract beyond its powers, the Society for the Preservation of Virginia Antiquities might upon precisely the same line of reasoning, in similar defiance of law, enter into a valid contract to dredge the Panama Canal.

It must always be observed that the property upon which the Government claims its lien, the unfinished hull of the "Galveston," was,

at the time of the filing of the liens, the property of the William R. Trigg Company.

If the fabric had been the property of the Government, the consideration of sovereignty might be more plausibly urged, but certainly that contention is entitled to no weight whatever, where no such right of property exists, and where the lien is claimed as a collateral security for a debt.

"It is part of the functions committed to this Government to build forts, arsenals, navy yards, etc., etc. It may purchase and hold lands for these purposes, yet it cannot exercise exclusive legislation over such lands, although used for national purposes, without the consent of the legislature of the State where the land lies. A

53 State has no power by taxation or otherwise, to retard, impede, burthen or control the operation of the constitutional laws passed by Congress to carry into effect powers vested in the National Government. Hence she may not have power to tax navy-yards or other property of the United States held within its bounds for public or national uses. But it does not follow that when the government officers purchase land in the name of the United States to secure a debt, as an individual or private corporation might do, that it thus ousts the jurisdiction of the State to tax it, or in any manner affects the liens or rights of mortgagees in such lands. In the mere exercise of a corporate right, the Government of the United States cannot claim the prerogative or immunities of a sovereign. She cannot compel a mortgagee to the hopeless remedy of a petition to Congress to redeem. The courts of New Jersey cannot thus be ousted of their jurisdiction and duty to assist the mortgagee to have his mortgage satisfied and the mortgaged premises sold for that purpose. When the Government, in the exercise of the rights and functions of a civil corporation, purchases lands to secure a debt, the accident of its sovereignty in other functions cannot be set up to destroy or affect the rights of persons claiming a title or lien on the same lands."

Elliott v. Van Voorst et al., Federal Case No. 4390, 8 Fed. Cas., p. 536-40, 3 Wall. Jr., 299.

The contention that the sovereignty of a contracting party alters the contract and its incidents has often been made in cases similar to the case at bar, but has never been successfully maintained.

"The truth is, that when the Government becomes the purchaser of property, it takes the title subject to the same rules as those which regulate the transfer of it to private persons. If it is subject to liens or encumbrances, it passes cum onere. So it is held in cases of ordinary maritime liens. If the Government becomes the owner of a vessel by purchase, forfeiture, or otherwise, it takes a title subject to the same liens for salvage, wages, bottomry, and other claims as would attach to it if sold to private persons. *United States v. Wilder*, 3 Sumner, 314; *The St. Jago de Cuba*, 9 Wheat., 416; *The Copenhagen*, 1 C. Rob. Adm., 289."

Briggs & Another v. A Light Boat, 7 Allen, p. 297.

54 "This is not a case of contract for supplies to the United States. * * * The argument *ab inconvenienti* has no force except in that class of cases where the contract is made directly with the Government and where, from public policy, the materials are deemed to be supplied and the labor performed upon the credit of the nation, etc. But in relation to the rights of the Government and the immunities of property purchased by it, whether real or personal, a very different rule of law obtains founded upon equally sound reason. If property is obtained by purchase the Government acquires no better title than that possessed by its vendor. If the property is legally encumbered by mortgage or other liens, the transfer of title does not divest it of these encumbrances. In this respect the Government stands upon the same footing as that of individuals. In controversies in courts of justice, involving the rights of property it has no muniments of title sanctified by sovereignty which should exempt it from the rules of law governing individuals in like cases. No well considered case can anywhere be found which declares that bare possession of property by the Government when wrongfully obtained of necessity changes the title and vests it in the sovereignty, or if justly obtained, that such possession extinguishes lawful liens of individuals upon it. Such a doctrine would be monstrous and an anomaly in a nation whose government is one of just laws and whose constitution declares that private property shall not be taken for public use without just compensation."

The Revenue Cutter No. 1, Fed. Cas. 11713, 20 F. C., 562-3.

"But in the meantime she has been taken possession of by the marshal, under the process of this court, as the property of, and in the possession of the iron works, at the suit of citizens who have a valid and subsisting lien upon her for materials used in her equipment, and furnished by them at the request of the builder while she was in the possession of the matter, and doubtless upon the faith of such security. If, under these circumstances, the United States desires to get possession of the vessel for the purpose of completing her, and protecting its interest therein, it is meet and right, and so is the law, that it shall first satisfy this lien of the libellants."

The Revenue Cutter No. 2, No. 11714 Fed. Cas., 20 Fed. Cas., 573.

55 The true doctrine is, that though the right to contract may be a sovereign attribute, the incidents of the contract and its construction are governed by the same law which binds the individual.

"With a few exceptions, growing out of considerations of public policy, the rules of law which apply to the Government and to individuals are the same. There is not one law for the former and another for the latter."

McKnight v. United States, 98 U. S., p. 186.

Southern Pac. Ry. Co. v. U. S., 28 Court of Claims, p. 105; Gilbert v. U. S., 1 Court of Claims, p. 28; Curtis' Case, 2 Court of Claims, p. 144; Walker v. U. S., 139 Fed., p. 413; Eight Hundred and Fifty-eight Bales of Cotton, 8 Fed. Cas. 389; U. S. v. Lee, 106 U. S. 208-

9; *The Revenue Cutter No. 1*, 20 Fed. Cas. 563; *Lee v. Kaufman*, 15 Fed. Cas. 192; (This case was affirmed in 106 U. S. 196); *U. S. v. Priscilla Barker*, 12 Wheat. 559; *Cook v. U. S.*, 91 U. S. 398.

The United States are entitled to prior liens or rights only where some statute provides for such priority.

"The right of priority of payment of debts due to the Government is a prerogative of the crown well known to the common law. It is founded not so much upon any personal advantage to the sovereign as upon motives of public policy, in order to secure an adequate revenue to sustain the public burdens and discharge the public debts. The claim of the United States, however, does not stand upon any sovereign prerogative, but is exclusively founded upon the actual provisions of their own statutes."

U. S. v. Bank of North Carolina, 6 Peters, p. 34.

"It has long since been settled, by the solemn adjudication of the Supreme Court, that the United States do not possess any general right of priority or privilege over private creditors, for the satisfaction of the debts due to them, founded upon any general prerogatives belonging to the Government in its sovereign capacity; but that all the priority or privilege which the Government is at liberty to assert is or must be founded upon some statute, passed by Congress, in virtue of its constitutional authority. This was expressly so held in *United States v. Fisher*, 2 Cranch (6 U. S.) 358-396, and the doctrine has ever since been strictly adhered to. *U. S. v. Hoose*, 3 Cranch (7 U. S.) 73; *Prince v. Bartlett*, 8 Cranch (2 U. S.) 431; *Thellessen v. Smith*, 2 Wheat. (15 U. S.) 396; *U. S. v. Howland*, 4 Wheat. (17 U. S.) 108; *Conard v. Atlantic Ins. Co.*, 1 Pet. 441, 26 U. S. 387; it is not here, as it is in England, where the sovereign is entitled, in virtue of his prerogative, to a priority over private creditors for satisfaction of debts due the crown. *Com. Dig. 'Prerogative' D. 89; Id. 'Debt,' G. 8, G. 9.*"

United States v. Canal Bank, Fed. Cas. No. 14715, 25 Fed. Cas. 278.

See also: *Gonard v. The Atlantic Ins. Co.*, 1 Peters, p. 441; *Briggs v. Light Boat*, 93 Mass. 183; *U. S. v. Amer. Surety Co.*, 111 Fed. 914; *U. S. v. Heaton*, 128 Fed. 414; *U. S. v. Detroit Lumber Co.*, 131 Fed. 668; *C. C. A. U. S. v. Amer. Surety Co.*, 135 Fed. 79.

Here there is no statute giving priority, therefore none exists.

If it is to be regarded as a hardship upon the United States to require it to pay the supply lienors, it must be admitted that it is also a hardship upon the lienors to refuse payment of the statutory liens. The contract provided a method which if followed would have prevented both hardships.

"It would have been competent for the United States, if they wished to avoid the inconvenience or danger of delay arising from liens in favor of private persons, to make their contract in such form as to divest the builder of any title to the property in the vessel during the process of construction, or to stipulate for the application of the purchase money to the extinguishment of all claims for

material furnished to the builder. But under the contract into which they entered, for the reasons already given, we can see no valid ground for refusing the claim of the petitioners to enforce their lien on the vessel in controversy. See the Revenue Cutter No. 1, 21 Law Reporter 281."

Briggs and Another v. A light Boat, 7 Allen 298.

Twenty-fifth assignment of error.

57 The court erred in declaring that the rights of the prospective owners to any of the vessels hereinbefore mentioned were superior to the rights of the supply lienors, and this is so, even if the contracts had provided for the passage of title.

The provisions of the supply lien statute are plain and definite. If the title to the foregoing vessels or any part of them were in the Trigg Company at the time of the furnishing of the supplies, the rights of the supply lienors immediately attached thereto. Appellees concede that at one time the title to the vessels was in the Trigg Company.

No attempt has been made by the claimants of the vessels to show that title had passed, or any lien to which they might be entitled, had attached to the exclusion of the supply lienors, prior to the furnishing of materials. Appellants deny that such claims could in any event exclude the supply lienors, but if the contrary were true, certainly the burden of proof is upon the appellees to show that the title passed, or their lien attached for the furnishing of materials. In the absence of this, the presumption of the law is, therefore, that the title had not passed and that the vessel is liable to the lien.

"In the absence of any special contract to the contrary, the title to the vessel would have continued in the builder until it was completed and delivered, but by the express undertaking of the parties, when an installment was paid, the vessel so far as then constructed, and the materials therein inserted were to be and became the property of the person making such payments. The title being originally in the builders, the burden was on the defendants to show that such title was divested before the plaintiffs furnished the materials. This, the defendants have failed to show and therefore the builders, at the time must be regarded as the owners of the vessel and as competent to charge it with liens."

Elliott v. Edwards, 35 N. J. L. 265.

Twenty-sixth assignment of error.

The court erred in declaring that the rights of the prospective owners in any of the vessels hereinbefore mentioned were superior to the rights of the supply lienors, and, in the event that the court was correct in ascertaining that the contracts made provision for the attaching of liens or the passage of title thereunder in favor of the prospective owners, and that the lien or title so acquired was superior

to a supply lien subsequently attaching, yet the court erred in not ascertaining the dates at which the rights of the prospective owners and the supply lienors, respectively, attached—the report of the commissioner simply fixed the priorities as between the supply lienors, as determined by the date of filing. Regarding all other liens as inferior supply liens, and reporting that no title passed, the commissioner made no attempt to ascertain relative priorities in date as to the attaching of liens, the passing of title and the furnishing of supplies.

Twenty-seventh assignment of error.

ASSIGNMENT OF ERROR BY FIRST NATIONAL BANK OF RICHMOND, VIRGINIA.

The First National Bank of Richmond, Virginia, one of the undersigned petitioners, assigns as error the action of said Chancery Court of the city of Richmond in overruling by said decree of February 4, 1908, the exception of said bank to the said report No. 4 of Commissioner Massie rejecting the claim of said bank to the reserve upon the contracts of the Wm. R. Trigg Company with the United States Government for the construction of the "Mohawk" and the assignment thereof to said bank by said company as being in violation of section 3477 of the Revised Statutes of the United States, and as in any event subordinate to all liens duly acquired for labor and supplies furnished the Wm. R. Trigg Company.

In support of this assignment the following considerations are briefly presented, which will be elaborated upon the hearing of the cause:

1. That the United States Government is the only party which can question the validity of said assignment under said act of Congress.
2. That the Government recognized said assignment.
3. That said assignment is not within the scope, reason or spirit of said act. It is submitted that the learned commissioner did not give proper weight and consideration to the words which appear in the syllabus in every case cited by him to condemn this assignment, namely, "against the United States."

The present claim is not against the United States, but is against the fund which has been ascertained and a warrant issued therefor under section 3477. The money is now in the lower court, subject to its decision according to the laws of this State, and not of another sovereignty, which for present purposes has no more bearing upon the question here than a statute of Oregon or Canada. It is submitted that Congress has no right to pronounce void a contract between two citizens of this State, containing nothing that is *malum in se* or *malum prohibitum* by the laws of this State, when the question of its validity arises between two citizens of this State in a court of this State.

For the foregoing, and other reasons to be assigned at bar, your petitioners respectfully pray that an appeal and supersedeas to said decree may be granted to them, and that the said decree may be reviewed and reversed, and that this court proceed to render such decree herein as should have been entered below.

Ansonia Brass & Copper Co., American Steel Casting Co., Babcock & Wilcox Co., Blake Mfg. Co., Brown Hoisting Machine Co., Carbon Steel Co., Carnegie Steel Co., Chicago Pneumatic Tool Co., Chesapeake & Ohio Coal Agency Co., Cleveland City Forge & Iron Co., Fore River Ship & Engine Co., Hendricks Bros., Hilles & Jones Co., Laidlaw-Dunn-Gordon Co., Keasby & Mattison Co., Lunkheimer Co., F. H. Lovell & Co., J. L. Mott Iron Works, Merchant & Co., National Tube Co., Morris, Wheeler & Co., Sayen & Schultze, Southard & Co., Worth, Bailey & Co., Newport News Shipbuilding & Dry Dock Co., by R. G. Bickford, their attorney; Chas. Este, C. C. Knight & Co., by Floyd Hughes, their attorneys; Commercial Trust Co., trustee; Bank of Richmond, Inc., trustee; R. C. Hoffman & Co., Seaboard Steel Casting Co., Jameson McKenzie & Evans, Shelby Iron Co., The Bucyrus Co., by Munford, Hunton, Williams & Anderson, their attorneys; A. P. Swoyer & Co., American Locomotive Co., Morris Machine Works, Crocker Wheel Co., by McGuire, Riely & Bryan, their attorneys; S. H. Hawes & Company, by Christian, Gordon & Christian, their attorneys; J. L. Lindsay, by R. L. Montague, his attorney; Baldwin & Brown, Smith Courtney Company, Crucible Steel Company, Williamson Bros. & Co., Chas. Corey & Son, Speakman Supply & Pipe Company, Hunter B. Frischkom, by Allan G. Collins, their attorney; Gordon Metal Co., Monticello Hotel, by Smith, Moncure & Gordon, their attorneys; Phoenix Iron Co., Libby Mfg. Co., Edgar G. Gunn, John Drever & Co., John Lucas & Co., N. L. Graves & Co., Adams & Westlake Co., John T. Lewis & Bro., Kanawha Fuel Co., Fairbanks Co., Manning, Maxwell & Moore, Ruckman Dynamo Works, Haydin & Derby Mfg. Co., Eugene Nice, Cockran Bros., Fredk. Post Co., American Screw Co., Gibson & Kirk, Asheroft Mfg. Co., by Jo Lane & Cary Ellis Stern, their attorneys; First National Bank, Richmond, Va., by Geo. Bryan, Christian, Gordon & Christian, its attorneys; The Savings Bank of Richmond, by A. W. Patterson, its attorney; Coleman Wohtham, trustee, Virginia Trust Company; Virginia Trust Company, trustee for James N. Boyd and others under certain written assignments from the William R. Trigg Company, by J. Jordan Leake and Christian, Gordon & Christian, their attorneys.

We, Eppa Hunton, Jr., and E. Randolph Williams, attorneys practicing in the Supreme Court of Appeals of Virginia, do hereby

certify that in our judgment there is error in the decree complained of in the foregoing petition, and that the same should be reviewed by the Supreme Court of Appeals of Virginia.

EPPA HUNTON, Jr.,
E. RANDOLPH WILLIAMS.

Received October 27, 1908.

JAMES KEITH.

Appeal and supersedeas. Bond \$1,000.

JAMES KEITH.

62 In the Chancery Court of the city of Richmond.

S. H. HAWES & COMPANY
v.
WILLIAM R. TRIGG COMPANY & ALS. }

Agreement between counsel as to record to be made up for appeal from the decree of the Chancery Court of the city of Richmond, entered in the above cause on the 4th day of February, 1907.

Counsel for parties agree that upon appeal from the decree of the Chancery Court of the city of Richmond, entered February 4, 1908, the following papers or parts of the record shall be copied by the clerk and that such parts of the record, together with the agreement of facts herein contained, shall be in lieu of the complete record, to wit:

1. Decree of February 4, 1908. Decree appealed from (482).
2. The original bill of complaint filed by S. H. Hawes & Company (1).
3. Petition of C. C. Knight & Company.
4. Petitions of Standard Oil Company of New York and order filing same (124 and 144) and exhibits.
5. Petition of Pennsylvania Railroad Company (48).
6. Petition of New York, Philadelphia & Norfolk Railroad Company (49).
7. Demurrer and answer of Standard Oil Company of New York to bill of complaint (150) and exhibit.
8. Demurrer and answer of Pennsylvania Railroad Company to bill of complaint (60½b).
9. Demurrer and answer of the New York, Philadelphia & Norfolk Railroad Company to bill of complaint (60½A).
10. Demurrer and answer of the Standard Oil Company of New York to petition of C. C. Knight & Company (151) and exhibits.
11. Demurrer and answer of the New York, Philadelphia & Norfolk Railroad Company to petition of C. C. Knight & Company (59½A).
12. Demurrer and answer of the Pennsylvania Railroad Company to the petition of C. C. Knight & Company (59½B).

13. Answer of the First National Bank of Richmond to bill of complaint and to petition of C. C. Knight & Company (446).

14. Demurrer and answer of Virginia Trust Company, trustee, to bill of complaint and petition of C. C. Knight & Company (447).

15. Demurrer and answer of Virginia Trust Company to bill of complaint and petition of C. C. Knight & Company (445).

16. Decree of reference—first decree referring the matter to Commissioner Daniel (148)—second decree referring the matter to Commissioner Eugene C. Massie (298).

17. Report No. 4 of Commissioner Eugene C. Massie, filed July 19, 1906.

18. Decree of October 31, 1906, filing exceptions to report No. 4 of Commissioner Massie (444).

19. Exceptions to report filed October 31, 1906.

(1) Exceptions filed by U. S. attorney (436).

(2) Exceptions filed by Virginia Trust Co. (437).

(3) Exceptions filed by Virginia Trust Company, trustee, James N. Boyd, and others (438).

(4) Exceptions filed by Savings Bank of Richmond (439).

(5) Exceptions filed by the First National Bank (440).

(6) Exceptions filed by Standard Oil Company of N. Y. (441).

(7) Exceptions filed by Pennsylvania Railroad Company (442).

(8) Exceptions filed by New York, Philadelphia & Norfolk Railroad Company (443).

Without waiving any legal or equitable rights, it is agreed for the purposes of this appeal only that the claims of creditors of the William R. Trigg Company are, as stated in report of Commissioner Massie, filed in the clerk's office March 28, 1905, appearing in the printed record, D. M. No. 54 Ka., upon the appeal in this cause by the First National Bank of Richmond and others, commencing at page 41 of the said printed record.

20. ("Galveston"): Stipulations, dated June 22, 1903, with respect to cruiser "Galveston," filed for and on behalf of the United States by L. L. Lewis, United States attorney for the Eastern District of Virginia, under authority and direction of the Secretary of the Treasury and the Solicitor of the Treasury of the United States, with report of board of appraisers, dated Richmond, Virginia, May 21, 1903, and exhibits filed therewith, A, B, C, and D, including contract for construction of cruiser "Galveston" and the bond of the Virginia Trust Company, and statement of time and amount of payments made by U. S. under said contract.

21. ("Mohawk"): Stipulations dated June 30, 1903, with respect to revenue cutter "Mohawk," filed for and on behalf of the United States by L. L. Lewis, United States attorney, under authority and direction of the Secretary of the Treasury and the Solicitor of the Treasury of the United States, with exhibits filed therewith, A, B, and C, and statement of time and amount of payments made by U. S. under contract for construction of "Mohawk."

22. ("Benyuard"): Stipulations with respect to "Benyuard," dated July 14th, need not be reprinted, inasmuch as all evidence with respect to claims against the "Benyuard" have been already printed and certified to the Court of Appeals in appeal in this cause under the title Trigg Company & als. versus Bucyrus Company, to which reference is made.

23. Decrees discharging "Galveston," "Mohawk," and "Benyuard."

24. Depositions with respect to cruiser "Galveston," page 394 of depositions, returned by Commissioner Massie; depositions with respect to "Mohawk," page 341, and following of depositions reported by Commissioner Massie.

25. All depositions with respect to claim of the Standard Oil Company of New York, found on pages 341 to 381, inclusive, being depositions returned by Commissioner Massie, but in lieu of exhibits filed as part of depositions in the case of Standard Oil Company, it is agreed that all correspondence with reference to boilers for Standard Oil tank steamers, under subcontract of W. R. Trigg Company with Cramp Shipbuilding Company, constituting Exhibit Standard Oil Company No. 3 with Commissioner Massie's report, shall be filed, together with copy of the resolutions of the directors of the William R. Trigg Company with respect to said contract with the Cramp Shipbuilding Company.

That payments were made by the Standard Oil Company of New York, in accordance with terms of contract, up to and including
 65 payments of twenty-one thousand nine hundred and seventy-five dollars (\$21,975), made December 16th, 1902, which was the payment due "when all frames are up;" that receipted vouchers were all in the form of voucher No. 348 (first voucher), which was filed as a true copy and is to be made a part of the record; that subsequent vouchers issued were in the same form, the consideration and amounts being as follows:

January 30, 1902, payment on account of construction of 360 steamer, due "when engine cylinder patterns are completed," as per contract dated November 7, 1901-----	\$21, 975. 00
January 30, 1902, payment on account of construction of bulk oil steamer, due "when keel is laid," as per contract dated November 7, 1901-----	21, 975. 00
July 28, 1902, payment on account of construction of tank steamer, due "when one-quarter frames are up," as per contract dated November 7, 1901-----	21, 975. 00
September 5, 1902, balance payment on account of construction of No. 60 bulk oil steamer, due "when one-half in frame," as per contract dated November 7, '01-----	1, 000. 00
(The above amount retained by S. O. Company to recover suit of Joseph A. Walsh versus William R. Trigg Company.)	
August 18, 1902, payment on account of construction of 360 bulk oil steamer, due "when one-half in frame," as per contract dated November 7, 1901-----	21, 975. 00
Less-----	1, 000. 00
	20, 975. 00

(\$1,000.00 deducted to cover suit of Joseph A. Walsh versus William R. Trigg Company, as per papers served on Standard Oil Company.)

August 28, 1902, payment on account of construction of 360 bulk oil steamer, due "when engine cylinders are cast," as per contract dated November 7, 1901-----	\$21,975.00
66 September 22, 1902, payment on account of construction of 360 bulk oil steamer, due "when three-quarters frames are up," as per contract dated November 7, 1901-----	21,975.00
October 22, 1902, payment on account of construction of 360 bulk oil steamer, due "when boiler material is in the yard," as per contract dated November 7, 1901, as per letter of William Cramp & Sons, dated October 21, 1902-----	21,975.00
Less payment made October 17, voucher 2238-----	12,000.00
Or-----	9,975.00
October 17, 1902, payment on account of construction 360 bulk oil steamer, due "when boiler material is in yards," as per contract dated November 7, 1901-----	12,000.00
November 26, 1902, payment on account of construction of 360 tank steamer "Captain Lucas," due "when one-quarter plated," as per contract dated November 7, 1901-----	21,975.00
December 16, 1902, to Planters' National Bank, assignment of payment by the William R. Trigg Company as per their agreement dated February 6, 1902, with the Planters' National Bank on account of construction of 360 steel tank steamer "Captain Lucas," payment due "when all frames are up," as per contract made with William R. Trigg Company, dated November 7, 1901-----	21,975.00

26. That copies of orders for all material, with letters accompanying them, for steamer "Lucas," Standard Oil Company tank steamer, were forwarded to D. E. Ford, of latter company, for approval before being filed. That these orders were in form similar to the form of order dated March 2, 1902, which shall be printed in the record, except that some of the orders contained the statement: "This order is for Standard Oil Company's tank steamer," while others contained the statement: "This order is for Standard Oil tank steamer."

27. That four insurance policies were successively taken out and insurance paid for by William R. Trigg Company; that these policies were to cover "Hull No. 19, new steamer building by the William R. Trigg Company and the Virginia Trust Company, at and from the 10th day of February, 1902, but not beyond the 9th day of February, 1903;" that payment clause of said policies reads: "The William R. Trigg Company and or the Virginia Trust Company, for account of whom it may concern. Loss, if any, payable to William R. Trigg Company and or the Standard Oil Company."

28. Contract between the William R. Trigg Company and the Pennsylvania Railroad Company for the construction of tug boats "Bristol" and "Chester," dated June 30, 1902, was correctly set forth in copy of said contract attached to the demurrer and answer of the Pennsylvania Railroad Company to petition of C. C. Knight & Company;

That the specifications for said tug boats "Bristol" and "Chester," provided in detail for material and workmanship on said tug boats. Specifications include, under the title generally, the following statement:

The intention of these specifications is to cover the construction complete and ready for service of a tug boat of dimensions specified; the specifications are to be rigidly adhered to unless found im-

practicable, and no deviation in any respect is to be made without the written consent of the P. R. R. Co.; the workmanship and quality of materials to be of the best known.

All plates and angles forming the hull are to be of mild steel of about 60,000 pounds tensile strength with an elongation of 20 per cent in a section of 8 inches long.

All steel castings for the hull or machinery are to be of open hearth cast steel in accordance with P. R. R. specifications, and test pieces are to be taken from any piece if desired. Rivets are to be of soft steel of about 55,000 pounds tensile strength and 30 per cent elongation in 8 inches.

All patterns made for parts used in the construction of the hull, machinery or joiner work are to be properly finished and become the property of the P. R. R. Co.

Mould loft dimensions and detail plans as desired are to be furnished the P. R. R. Co. by the contractors as the work progresses, and all of the work is to be subject to the inspection and approval of the superintendent of motive power or his authorized representatives at any time.

29. Contract New York, Philadelphia & Norfolk Railroad Company with the William R. Trigg Company, dated the 17th day of July, 1902, was, as set forth in exhibit, filed with demurrer and answer of the New York, Philadelphia & Norfolk Railroad to petition of C. C. Knight & Company.

30. All depositions relating to contract for and construction of tug boats "Bristol," "Chester," and "Cape Charles" shall be
68 printed in the record (pp. 188 to 212, Dep. returned by Commissioner Massie), but in lieu of exhibits filed, it is agreed that payments as provided in said contracts for "Bristol" and "Chester" were made by vouchers in six payments of ten thousand dollars (\$10,000) each; that each of said vouchers were in form similar to the form of voucher 17224, which shall be printed as part of the record; that a payment of twelve thousand dollars (\$12,000) was made by the New York, Philadelphia and Norfolk Railroad in accordance with the terms of the contract for the construction of the "Cape Charles."

That copies of orders for material and supplies issued by the William R. Trigg Company to be used in the construction of the tug boats "Bristol" and "Chester" were sent to Pennsylvania Railroad Company when issued; that they were in form similar to the form of order issued July 7, 1902, which shall be copied in the record.

31. Two letters, August 26th and 27th, 1902, from William R. Trigg Company to Pennsylvania Railroad with bill No. 273.

32. The undersigned parties by counsel agree that record upon appeal, as aforesaid, shall be, as hereinabove set forth, with the understanding that any party interested, who may desire it hereafter, may have any portion of the record which he deems material, hereinafter certified and printed as part of this record at the expense of the appellants.

The undersigned hereby also acknowledge service of notice of application to the clerk of the Chancery Court of the city of Richmond for transcript of record as required by section 3457 of Pollard's Code of Virginia.

69 Munford, Hunton, Williams & Anderson, for Commercial Trust Co., trustee; R. C. Hoffman & Co.; Seaboard Steel Casting Co.; Jameson McKenzie & Evans; Shelby Iron Co.; The Bucyrus Co.; McGuire, Riely & Ryan, for Crocker Wheel Co.; A. P. Swoyer Co.; American Locomotive Co.; Morris Machine Works; R. G. Bickford, for appellants mentioned in petition as represented by him; Coke & Pickrell, for Standard Oil Co. of N. Y.; Francis L. Smith, for Pennsylvania & N. Y. P. & N. R. R. Companies; Floyd Hughes, for C. C. Knight & Co., and Chas. Este; L. L. Lewis, U. S. attorney; Christian, Gordon & Christian, for S. H. Hawes & Co.; R. L. Montague, for J. L. Lindsay; Allen G. Collins, for Baldwin & Brown, Smith, Courtney Co., Crucible Steel Co., Williamson Bros. & Co., Charles Corey & Son, Speakman Supply & Pipe Co.; Smith, Moncure & Gordon, for Gordon Metal Co. and Monticello Hotel; Jo Lane & Cary Ellis Stern, for Phoenix Iron Co., Libby Mnf. Co., Edgar G. Gunn, John Drever & Co., John Lucas & Co., N. L. Graves & Co., Adams & Westlake Co., John T. Lewis & Bro., Kana-wha Fuel Co., Fairbanks Co., Manning, Maxwell & Moore, Ruckman Dynamo Works, Haydin & Derby Mnf. Co., Eugene Nice, Cockran Bros., Fredk. Post Co., American Screw Co., Gibson & Kirk, Ashcroft Mnf. Co.; Geo. Bryan, for First Nat'l Bank, Richmond, Va.

70 And at another day, to wit, at a Court of Chancery for the city of Richmond, continued by adjournment, and held at the court room thereof, in the city hall, in said city, on the 4th day of February, 1908.

S. H. HAWES & COMPANY, WHO SUE, ETC.,

v.

WILLIAM R. TRIGG COMPANY ET AL.

This cause came on this day to be again heard upon the papers formerly read and especially upon the report of Commissioner Massie dated April 12, 1906, and filed in the clerk's office on the 19th of July following, the same being further designated as "Report No. 4, of Commissioner Massie," upon the depositions and exhibits referred to in said report, and upon the exceptions to said report, said exceptions having been heretofore filed under the decree entered herein on October 31, 1906; and was argued by counsel.

On consideration whereof, the court, being of opinion that the William R. Trigg Company is a manufacturing corporation within the meaning of the Virginia labor and supply lien statute in force when this suit was instituted, and that said statute was not void as being contrary to the constitution of the State of Virginia or to the

Constitution of the United States of America, such questions being *res adjudicata* in this cause, or on any other ground whatsoever, doth overrule the exceptions to said report of the Virginia Trust Company, the Savings Bank of Richmond, the First National Bank of Richmond, and the joint exception of the Virginia Trust Company, trustee, and James N. Boyd and others, in so far as such exceptions proceed upon grounds contrary to the opinion above expressed.

And the court, being further of the opinion that the action of the commissioner in reporting that the four several assignments in said report mentioned to the Virginia Trust Company as trustee for James N. Boyd and other certain persons named therein of the claims of the William R. Trigg Company against the United States of America, designated in said report as "loss claims," were void under section 3477 of the U. S. Revised Statutes, and that the claims themselves were subject to the liens of labor and supply creditors is, in view of the present uncertain status of said claims, premature, doth

on that ground alone adjudge, order and decree that the joint
71 exceptions of said Virginia Trust Company as such trustee, and of said James N. Boyd and others, to said report be, and the same are hereby, sustained, and that the findings of said commissioner in respect to said loss claims be, and the same are hereby, overruled and set aside, without prejudice, however, to the right of any party in interest hereafter to litigate their respective rights in and to said "loss claims" when the same shall have been allowed and paid by the United States.

And with respect to the claims of said William R. Trigg Company against the United States of America designated in said report as "reserved claims," the court approving the finding of the commissioner in his said report mentioned that the assignments by the said William R. Trigg Company of said claims therein set out, namely, the assignment to the First National Bank of Richmond of the amounts due by the United States under its contract for the construction of the revenue cutter "Mohawk" since paid into court, the assignment to the Virginia Trust Company of the amounts due by the United States under its contract for the construction of the cruiser "Galveston" and the assignment to the Savings Bank of Richmond of the amounts due by the United States under its contract for the construction of the "Benyuard," are null and void under section 3477 of the U. S. Revised Statutes, and that said claims are subject to the liens of labor and supply creditors, doth adjudge, order and decree that the exceptions of said assignees, the said First National Bank of Richmond, the said Virginia Trust Company and the said Savings Bank of Richmond to said report in the several particulars above mentioned be and the same are hereby overruled; but the court expressly reserves for future argument and decision the question raised by the exceptions of the Virginia Trust Company as to the right and duty of the United States against said labor and supply lienors and against all other persons claiming under the William R. Trigg Company, to retain and apply said "reserved claims" to the discharge of

any liability of the William R. Trigg Company to the United States on account of its failure to perform and execute its contract for the construction of the "Galveston," the "Benyuard" and the pumping machinery of the "Benyuard" or on any other account whatever, in exoneration of the liability, if any, of said Virginia Trust Company as surety upon bonds given by the said William R. Trigg Company to the United States for the faithful performance of contracts.

72 And with respect to the unfinished dredge "Benyuard," which, together with the material assigned for its construction, but not actually incorporated into said unfinished dredge or any of its parts, was under the decree entered herein on July 14, 1903, delivered to the officers and agents of the United States of America, upon the filing on behalf of said United States by L. L. Lewis, their attorney for this district, of a stipulation in writing in conformity with sections 3753 and 3754 of the U. S. Revised Statutes, the court is of opinion and doth declare that by the express terms of the contract, the said unfinished dredge, its hull, engines, machinery and all of its parts and belongings complete and incomplete, excepting only the aforesaid assigned but unincorporated material, were prior to and at the time of the delivery above mentioned the property of the said United States and that the said United States, by reason of the insolvency and consequent default of the said William R. Trigg Company, were then entitled under said contract to take possession of said unfinished dredge, its hull, engines, machinery and other parts, and have the same completed at the cost and expense of said company as to any excess above the contract price; and that the labor, supply and other creditors of said William R. Trigg Company are entitled to no claim or lien in, to or upon said unfinished dredge or any of its parts, section 2465, as at present amended, of the Code of Virginia, even if otherwise applicable to contracts of that character, not being binding upon the said United States. And accordingly it is adjudged, ordered and decreed, that the exceptions to said report of Commissioner Masie filed in behalf of the said United States by the said L. L. Lewis, their attorney for this district, as well as the exceptions of the Virginia Trust Company in the particulars above mentioned be and the same are hereby sustained and said report modified to conform to the opinion above expressed. But as to the above mentioned assigned but unincorporated material, the court, being of opinion that the title to the same did not pass to the said United States, but that said material remained the property of the said William R. Trigg Company and is subject to its labor and supply liens and the claims of its other creditors, doth overrule the said exceptions of the United States and the Virginia Trust Company to that extent.

And with respect to the unfinished revenue cutter "Mohawk" and the material assembled for its construction, which unfinished
73 vessel and material were under the decree entered herein on July 14, 1903, delivered to the officers and agents of the United States of America, upon the filing on behalf of the said United States by the said L. L. Lewis, their attorney for this district, of a stipula-

tion in writing in conformity with sections 3753 and 3754 of the U. S. Revised Statutes, the court is of opinion and doth declare that under the contract for the construction of the said "Mohawk" the United States before and at the time of the delivery above mentioned had a lien upon said unfinished vessel, its hull, machinery, equipment, and the material assembled for its construction, for the amounts paid by the said United States under said contract, to wit, \$149,437; and were, moreover, entitled, the said William R. Trigg Company having become insolvent and having defaulted in its said contract, to take possession of and complete the same at the cost of the said William R. Trigg Company so far as such cost might be in excess of the contract price; and that said lien so reserved as above mentioned to the United States by said contract is valid and is not affected by the recordation statutes of the State of Virginia, and is prior in time and in right to the liens of the labor and supply creditors of the said William R. Trigg Company, and that said labor and supply liens can have effect only upon the balance, if any, ascertained to be due by the United States to the said William R. Trigg Company upon the completion of said vessel. Accordingly it is adjudged, ordered, and decreed that the exceptions to said report of the said United States filed by its said district attorney, as well as the exceptions of the Virginia Trust Company thereto, in the particulars above mentioned, be and the same are hereby sustained and said report amended so as to conform to the opinion above expressed; reserving, however, as aforesaid, for future decision the question as to the right and duty of the United States to apply any surplus over the contract price to any claim or claims against said William R. Trigg Company in exoneration of any claim against the Virginia Trust Company, as surety for said William R. Trigg Company.

And with respect to the unfinished cruiser "Galveston," and the material assembled for its construction, which unfinished vessel and material were under the decree entered herein in July 14, 1903, delivered to the officers and agents of the United States of America, upon the filing on behalf of the said United States by the said L. L.

74 Lewis, their attorney for this district, of a stipulation in writing in conformity with sections 3753 and 3754 of the U. S.

Revised Statutes, the court is of opinion and doth declare that, under the contract for the construction of said cruiser, the United States, because of the insolvency and default of the said William R. Trigg Company, having declared said contract forfeited, had before and at the time of the delivery above mentioned a lien upon said unfinished cruiser, its hull, machinery, equipment, and the material assembled for its construction, for the partial payments made by the said United States under said contract, to wit, \$698,514.45; and that said lien so reserved to the United States was valid, and was not affected by the recordation statutes of the State of Virginia, and was paramount and superior to the liens of the labor and supply creditors of the said William R. Trigg Company; and that, upon the making and reporting to the Secretary of the Navy of the inventory and

appraisement contemplated by said contract, said appraisement amounting to \$699,163.53, the title to said unfinished cruiser, its hull, machinery, equipment, and the material assembled for its construction vested, as upon a foreclosure of said lien, absolutely in the United States for a price equal to the amount of said appraisement; and that the said United States, acting by and through its Secretary of the Navy, had the right thereupon to take possession of said unfinished cruiser, its hull, machinery, and equipment, as well as the material assembled for its construction and complete said cruiser at the risk and cost of the said William R. Trigg Company as to any excess above the contract price, and to that extent to use free of charge the yard, plant, machinery, tools and appliances of the said William R. Trigg Company; and that said liens of the labor and supply creditors of the said William R. Trigg Company can have effect only upon the balance, if any, found to be due by the said United States to said company upon the final completion of said cruiser. Accordingly it is adjudged, ordered and decreed, that the exceptions to said report filed on behalf of the United States by its said district attorney, as well as the exceptions thereto of the Virginia Trust Company, in the particulars above mentioned, be and the same are hereby sustained and said report amended so as to conform to the opinion above expressed.

And with respect to the unfinished tugs "Bristol" and
75 "Chester" under construction at the time of the receivership

by the William R. Trigg Company for the Pennsylvania Railroad Company, the unfinished tug "Cape Charles" then under construction by said company for the New York, Philadelphia & Norfolk Railroad Company, and the unfinished oil tank steamer "Captain Lucas" then under construction by said company for the Standard Oil Company of New York, the court is of opinion and doth declare that it was the intention of the parties, as collected from the provisions of their respective contracts for the building of said vessels, the surrounding circumstances and the practical construction put by the parties themselves upon such contracts, that the titles to said unfinished vessels and all their parts should not remain in the said William R. Trigg Company until completed and delivered, but should pass to the said corporations for which they were respectively being constructed, as fast as the different stages of partial completion named in said contracts were reached, inspected and certified to by the surveyors or inspectors appointed for that purpose, and the appropriate partial payments specified in said contracts made, the fact being that the titles thereto passed with the first partial payments and all the subsequent additions to the growing structures, as fast as made, became accessionees the property of the said respective corporations for which the said vessels were being built; and that the respective titles of said corporations are prior in time and in right to the liens of the labor and supply creditors of the said William R. Trigg Company, the court being further of the opinion that section 2465, as at present amended, of the Code of Virginia, has no application to contracts of this character where the vessels, which are the subject matter of

said contracts, were from the very nature of the case incapable of delivery before completion and were left with the said William R. Trigg Company solely for the purpose of being put into a deliverable state; and all of said unfinished vessels, and with each vessel the material assigned for its completion but not actually incorporated into it or any of its parts, having been under decrees herein sold and the proceeds of such sales deposited to the credit of the court in this cause, the court is further of the opinion and doth declare that the proceeds of said sales, except so much thereof as represents the assigned but unincorporated material in each case, following the titles to the said unfinished vessels, are the absolute property of the said

76 several corporations for which said unfinished vessels were being built respectively, paramount and superior to said labor and supply liens. And accordingly it is adjudged, ordered and decreed that the separate exceptions to said report of the Pennsylvania Railroad Company, the New York, Philadelphia and Norfolk Railroad Company, and the Standard Oil Company of New York, in the several particulars above mentioned, be and the same are hereby sustained and said report modified and amended to conform to the opinion above expressed. But the court, being of the opinion that the said assigned but unincorporated material did not under said contracts pass from the said William R. Trigg Company, but that said assigned but unincorporated material and so much of the proceeds of each of said sales as now represents the same remained its property and is subject to the liens of its labor and supply creditors, doth adjudge, order and decree, that the several exceptions of the three exceptions last named be and the same are hereby overruled to that extent.

And the court having now passed upon all the exceptions filed to said report of Commissioner Massie, except the particular exception of the Virginia Trust Company reserved as above mentioned for future argument and decision, it is adjudged, ordered and decreed, that said report be and the same is hereby modified and amended in the particulars wherein said exceptions to said report have been sustained and in conformity with the opinion thereupon of the court hereinbefore expressed, and that said report as so modified and amended be and the same is hereby confirmed reserving only the question raised by the aforesaid exception of the Virginia Trust Company.

And it is further adjudged, ordered and decreed, that this cause be referred to a commissioner of this court with instructions to enquire and report to the court:

1. What balances, if any, are due by the United States to the said William R. Trigg Company upon final settlement under the several contracts for the construction of the "Mohawk," "Benyuard," and "Galveston;"

2. What was the value of the material assembled and assigned for the construction of the "Benyuard," but not incorporated therein,

and delivered with that unfinished vessel to the officers and agents of the United States as above mentioned;

3. What is a reasonable and proper deduction to be made in
77 each case from the proceeds of the sales of the unfinished tugs
"Bristol," "Chester," and "Cape Charles," and the unfinished
oil tank steamer "Captain Lucas," on account of the assigned but un-
incorporated material sold as above mentioned with each of said un-
finished vessels.

All of which enquiries said commisisoner shall, after giving rea-
sonable notice to the parties interested or their counsel of record,
execute and report to the court at the earliest practicable day together
with any matter specially stated, deemed pertinent by himself, or
required by any of the parties to be so stated, returning with his said
report all depositions and exhibits taken or filed in the course of
executing such enquiries.

BILL.

To the Honorable DANIEL GRINNAN, *Judge of the Chancery Court
of the city of Richmond:*

Humbly complaining, show unto your honor, your orators, S. H.
Hawes and H. S. Hawes, merchants and partners trading under the
firm name of S. H. Hawes & Co., who sue on behalf of themselves and
all other creditors of the William R. Trigg Company similarly situ-
ated, who will come in and make themselves parties plaintiffs to this
suit and contribute to the costs thereof, the following case, namely:

The said William R. Trigg Company is a corporation created and
existing under the laws of the State of Virginia, and was organized
and is carried on for the purpose of manufacturing and building
ships, boats, engines, tools and other manufactures in iron, steel, and
other metals; and the said company is a manufacturing company
under the laws of Virginia. Your orators are dealers in coal, coke,
cement, lime, firebrick, fireclay, and other supplies of a similar char-
acter. Your orators sold and delivered to the said William R. Trigg
Company coal, coke, cement, lime, firebrick, fireclay, and other sup-
plies necessary to the operation of the said William R. Trigg Com-
pany to the amount of two thousand and forty-eight dollars and
sixty-eight cents (\$2,048.68) upon the dates and at the prices respec-
tively set forth in a memorandum of the claim of your orators here-
with filed marked "Exhibit No. 1," and now prayed to be read as a
part of this bill.

78 The whole of the said claim of two thousand and forty-eight
dollars and sixty-eight cents (\$2,048.68) is now due and owing.
It consists of a running account, the first item being for supplies sold
and delivered on the 3rd day of July, 1902, and the last item is for
supplies sold and delivered on the 9th day of December, 1902. The
said account is a continuing, running account from the first to the
last item therein set forth, and the last item of said account was due
and payable within ninety days before the date on which the said

account was filed in the clerk's office of this court, as next hereafter fully stated.

Your orators further show unto your honor that they, on the 23d day of December, 1902, filed in the clerk's office of the Chancery Court of the city of Richmond (in which city is located the chief office of the said William R. Trigg Company) a memorandum of the amount and consideration of their claim, verified by affidavit, in order that the clerk might record the same in the deed book and index the same in the name of your orators and the said William R. Trigg Company.

Your orators, therefore, allege that they are lien creditors under the statute of the said William R. Trigg Company for said claim to the amount of two thousand and forty-eight dollars and sixty-eight cents (\$2,048.68) as aforesaid, and have, by virtue of said statute, to the extent of the money due them for such supplies, a prior lien upon the personal property of said company other than that forming a part of its plant, and also a lien upon all the estate (real and personal) of said company to the extent set forth in said statute; and they claim the benefit of said lien in this suit upon the personal property of said company other than that forming part of its plant, and also a lien upon all the estate (real and personal) of the said William R. Trigg Company, as provided for under the laws of this State.

Your orators further show unto your honor, that the said William R. Trigg Company is insolvent, and that it is necessary and proper that its assets should be taken possession of by a receiver to be appointed by this honorable court, and its assets sold and administered under the decrees of the court.

Your orators further show unto your honor, that by a first mortgage, dated the first day of June, 1901, the said William R. Trigg Company conveyed to the Commercial Trust Company of the city of Philadelphia, as trustee, all and singular the following estates, lands, properties, rights, privileges and franchises, to wit: First, all of the real estate of the said William R. Trigg Company, as set forth and described in said mortgage (a copy of which is herewith filed as a part of this bill, marked "Exhibit No. 2"); also its buildings, wharves, docks, dry docks, piers, slips, landing places, railways, marine railways, shops, furnaces, forges, factories, offices, storehouses, and other improvements thereon erected; also the engines, boilers, machinery, belting, shafting, cranes, hoisting shears, hammers, tools, apparatus, implements, fixtures, patterns, and other appurtenances in and upon said premises, or any part or parts thereof; and also all and singular the corporate rights, privileges, powers, and franchises whatsoever unto the said William R. Trigg Company belonging or in anywise appertaining; and together with all and singular the ways, streets, alleys, &c., as fully set forth and described in said deed, which is duly recorded in the clerk's office of this honorable court.

Your orators further show that the said deed was made to secure to the holders thereof one thousand coupon bonds of one thousand dollars each, bearing interest at the rate of five per cent per annum, as also enumerated and described in said deed. Said bonds are all dated June the first, 1901, and the principal of which is payable on the first day of June, 1921, with semiannual coupons attached, the interest on which bonds, as evidenced by said coupons, is payable semiannually on the first days of June and December in each year, and which interest has been paid up to and including December the 1st, 1902.

Your orators further show unto your honor that on the 14th day of June, in the year 1902, the said William R. Trigg Company executed to the Richmond Trust & Safe Deposit Company, as trustee, a second mortgage on the same property to secure a further issue of eleven hundred coupon bonds, nine hundred of which are in the sum of one thousand dollars each and two hundred of which are in the sum of five hundred dollars each, making an aggregate of one million dollars, which mortgage has also been duly recorded in the clerk's office of this court, and a copy of which, marked "Exhibit No. 3," is herewith filed and asked to be read as a part of this bill.

80 Your orators further show unto your honor that the interest on the bonds attempted to be secured under the second mortgage as aforesaid is payable on the 14th days of June and December in each year during the currency of said bonds, which run for ten years from the said 14th day of June, 1902; and your orators allege that the interest coupons which did mature on the 14th day of the present month (December, 1902) were not paid because of the insolvent condition of the company and because of its inability to meet said maturing coupons.

Your orators are informed and believe that all of the bonds described in both of the foregoing mortgages have been issued and sold and are now held by numerous parties, the names and number of which holders are to your orators unknown.

Your orators further charge that the said William R. Trigg Company is largely indebted to numerous banks and individuals and to a large number of its employees and others who have furnished it with supplies, which claims your orators are informed and believe it is unable to meet because of its failing and insolvent condition; and the names and number of these creditors are also unknown to your orators. And, therefore, your orators further charge that it is necessary for this court to appoint a receiver to take charge of the assets of the said William R. Trigg Company in order that they may be administered under the direction of your honor's decree.

Your orators are informed and allege that the said William R. Trigg Company has on hand a large number of uncompleted contracts, towards the completion of some of which such progress has been made that it will be of advantage to the said company and its creditors that a receiver shall be empowered to complete them; and this can only be accomplished by a receiver appointed by a court of

competent jurisdiction. Your orators apprehend that unless a receiver is appointed to take possession of the property and assets of said company a great many suits will be brought against the company and attempts made to levy by way of attachment and otherwise upon its property and assets; and in this race of diligence the assets of the company will be largely wasted and sacrificed. In addition, the said William R. Trigg Company owes a great number of

81 debts for which the creditors hold collaterals which it may be to the advantage of the company, and the creditors should be protected from sale and sacrifice; and the appointment of a receiver is necessary to accomplish this object also, as the said company is without means of doing so.

In tender consideration whereof, and for as much, &c., &c., your orators pray that the said William R. Trigg Company, the Commercial Trust Company of the City of Philadelphia, trustee, and the Richmond Trust & Safe Deposit Company, trustee, may be made parties defendants to this bill and required to answer the same; but answers under oath from each and all of said parties defendants are hereby expressly waived; that your orators' debt and lien may be decreed by your honorable court, and the assets and property of the said William R. Trigg Company subjected to the payment thereof; that your honor will appoint a receiver or receivers to take possession of and administer the assets of the said William R. Trigg Company, and that the directors and officers of said company may be enjoined from interfering with the assets so placed in the possession of said receiver, and that the said assets may be sold and the proceeds distributed among the several creditors of said corporation according to their respective rights and priorities; that an account may be taken of all the assets of the said William R. Trigg Company, and of all the claims against the said William R. Trigg Company, and of all liens against the property of said company and their respective priorities; that a proper fee may be allowed to your orators' counsel out of said assets for instituting and conducting this suit; and that all proper accounts may be taken and decrees rendered; and that your honor will grant such other, further and general relief in the premises as the nature of the case may require and to equity may seem meet.

And your orators will ever pray, &c.

COMPLAINANTS,
By Counsel.

CHRISTIAN & CHRISTIAN, *p. q.*

STATE OF VIRGINIA,
City of Richmond, to wit:

' This day personally appeared before me, Thos. C. Gordon, a notary public in and for the city aforesaid, in the State of Virginia, Horace S. Hawes, of the firm of S. H. Hawes & Co.,
82 and made oath that the statements contained in the foregoing

paper are true to the best of affiant's knowledge, information and belief.

Given under my hand this 16th day of December, 1902.

THOS. C. GORDON, N. P.

My commission expires March 20, 1906.

Petition filed in court under decree of April 7th, 1903.

In the Chancery Court of the city of Richmond.

In the matter of

S. H. HAWES & COMPANY, SUING, &C.,	} In equity.
v.	
WILLIAM R. TRIGG COMPANY ET AL.	

To the Honorable DANIEL GRINNAN, *Judge of the Court aforesaid:*

The petition of Charles C. Knight, Joseph S. Knight, and Samuel S. McCormick, copartners, trading under the firm and style of C. C. Knight and Company, creditors of the defendant company, who desire to come in as plaintiffs in this cause and contribute their proper proportion to the expense thereof, allege and propound as follows:

First. Your petitioner respectfully sheweth unto the court, that during the months of September, October, November and December of the year 1902, the petitioners furnished to the defendant company, which is a manufacturing company duly organized and existing under the laws of the State of Virginia, with its principal office in the city of Richmond, in the State aforesaid, certain supplies which were, and are, necessary to its operation as such manufacturing company, to the amount of five thousand one hundred and sixty-three dollars and fifty-six cents (\$5,163.56); that within ninety (90) days after the last item of said bill for supplies were furnished, your petitioners filed in the clerk's office of the Chancery Court of the city of Richmond a memorandum of the amount and consideration of their claim, duly verified by affidavit, which was duly filed and recorded in said clerk's office on the 22nd day of December, 1902, and which memorandum, duly endorsed by the clerk of said court, is herewith filed and asked to be taken as a part of this petition and marked "Exhibit A." Said exhibit contains an itemized statement of the articles, materials, and supplies so furnished by your petitioners to said defendant company.

That on the 22nd day of December, in the year 1902, S. H. Hawes and H. S. Hawes, partners doing business under the firm and style of S. H. Hawes and Company, filed their bill in chancery, as plaintiffs, in the Chancery Court of the city of Richmond, Virginia, against the Wm. R. Trigg Company, a corporation, defendant, wherein, suing for the benefit of themselves and all other creditors

of said defendant company who shall come in, take part in, and share in the costs of said suit, they seek to subject the property of the said defendant company to the payment of their supply lien claim and the claims of other creditors against said company who shall thus come in and contribute to the costs of said suit.

That said chancery cause is still pending in the said court, and under certain proceedings had in said cause, one Lilburn T. Myers was appointed receiver of said defendant company by said court, vested with certain powers over and has taken, and is now in possession of all the assets and properties of said defendant company.

That your petitioners, by reason of being supply lien creditors of said defendant company, as aforesaid, are entitled to be admitted as parties plaintiff to said cause, and by leave of the court, for the purpose of asserting their rights and seeking the relief as is hereinafter to be set forth, to file this their petition, pursuant to the statutes of Virginia in such case made and provided.

Second. Your petitioners here adopt the allegations of the bill of the plaintiffs filed in this cause as fully and effectually as if the same had been here repeated fully and at length; they especially aver and charge that under and pursuant to the statutes of Virginia in such case made and provided, they claim by reason of having filed their supply lien as aforesaid, a prior lien upon all the personal property of said defendant company, other than that forming part of its plant, to the extent of said five thousand one hundred and sixty-three dollars and fifty-six cents (\$5,163.56), and also a lien upon all the estate, both real and personal, of said defendant company, of and to which said company was possessed and entitled at the time said bill of complaint was filed and a receiver appointed by this honorable court.

84 Third. Your petitioners further show unto this honorable court, that among the assets which this company was, or should have been possessed of when said bill of complaint was filed, was a certain "loss claim" amounting to two hundred and fifty-six thousand (\$256,000.00) dollars against the Government of the United States for the construction of the United States torpedo boats "Shubrick," "Stockton," and "Thornton;" and the United States torpedo boat destroyers "Decatur" and "Dale," which claim has been duly established by the board appointed by the honorable the Secretary of the Navy, but which claim has not been allowed by the Congress of the United States and for which no warrant for the payment thereof has, as yet, been issued.

That the defendant company, for the purpose of borrowing money, did on the 10th day of October, 1902, the 17th day of November, 1902, 19th day of November, 1902, and on the 25th day of November, 1902, execute certain assignments of said claim to the Virginia Trust Company, as trustee, to secure certain parties in said assignments named, the payment of certain sums of money therein mentioned, as follows:

(a) In the assignment of October 10th, 1902, to secure—

Robert S. Boshier	\$20, 246. 00
Thomas Atkinson	20, 246. 00
James N. Boyd	20, 246. 00
S. Dabney Crenshaw	11, 705. 00
J. J. Montague	10, 630. 00
H. M. Flagler	41, 625. 00
	<hr/>
	\$124, 698. 00

(b) In the assignment of November 17th, 1902, to secure the following persons the following amounts, respectively:

Robert S. Boshier	\$5, 000. 00
Thomas Atkinson	5, 000. 00
James N. Boyd	5, 000. 00
J. Dabney Crenshaw	2, 800. 00
J. J. Montague	2, 200. 00
	<hr/>
	\$20, 000. 00

85 (c) In the assignment of November 19th, 1902, to secure the following persons the following amounts respectively:

Robert S. Boshier	\$7, 500. 00
Thomas Atkinson	7, 500. 00
James N. Boyd	7, 500. 00
S. Dabney Crenshaw	4, 200. 00
J. J. Montague	3, 300. 00
	<hr/>
	\$30, 000. 00

(d) In the assignment of November 25th, 1902, to secure the following persons the following amounts respectively:

Robert S. Boshier	\$3, 000. 00
Thomas Atkinson	3, 000. 00
James N. Boyd	3, 000. 00
S. Dabney Crenshaw	1, 680. 00
J. J. Montague	1, 320. 00
	<hr/>
	\$12, 000. 00

Your petitioners are informed and believe that the foregoing assignments are substantially in the form of the assignment of November 25th, 1902, a copy of which is herewith filed as a part of this petition and marked "Exhibit B."

Fourth. Your petitioners aver and charge that under the statutes of the United States in such case made and provided, the foregoing assignments are absolutely null and void, and if the trustee, the said Virginia Trust Company, is permitted by this honorable court to take any steps looking towards the collection of said "loss claims" from the Government of the United States for the benefit of the various persons respectively named in said several assignments, the rights of your petitioners will be seriously and irreparably impaired and their prior lien, given them by the laws of Virginia, as aforesaid, illegally divested.

Fifth. Your petitioners further aver and charge that among the other assets of and to which the defendant company were, and are,

possessed of and entitled were various claims against the Government of the United States for reservation under and pursuant to various contracts entered into between the said defendant company and certain officers of the United States Government for the construction of certain vessels for said Government, now in course of construction, or constructed and not finally accepted by said Government; the aggregate sum of said reservation claims amount, as your petitioners are informed and believe, to at least one hundred and fifty-four thousand, two hundred and thirty-three dollars and forty-eight cents (\$154,233.48).

(a) Your petitioners aver and charge that said defendant company on the 9th day of September, 1901, entered into a contract with Capt. J. C. Sanford, of the United States Corps of Engineers, for the construction of a steel-hull sea-going suction dredge for the Government of the United States, upon certain terms and conditions, and for the payment of certain monies to be paid by the said Government at various times as will appear from said contract now in possession of the said company; that the construction of said dredge for said Government has not, as yet, been completed; that the claim of said defendant company for said construction has not as yet been allowed, nor has a warrant for the payment thereof been issued by said Government; that notwithstanding such facts, said defendant company, in derogation of the rights of your petitioners, and contrary to the statutes of the United States in such case made and provided, did, on the 20th day of December, 1901, assign said contract and its claim therein against the said Government to the Savings Bank of Richmond, a banking institution duly incorporated and existing under the laws of the State of Virginia, to secure certain sums of money by said bank loaned to said defendant company.

(b) Your petitioners further aver and charge that said defendant company did on the day of enter into a contract with certain officers of the United States Government for the construction for said Government of two revenue cutters, No. 7 R. C. S., and No. 8 R. C. S. That prior to the completion of said revenue cutters and prior to the allowance of the claim of said defendant company against the Government for said construction, and prior to the issuing of warrant for the payment thereof, said defendant company did, pursuant to the resolutions of its board, held on May 11, 1900, execute an assignment and power of attorney to the First National Bank of Richmond, Virginia, a banking association, duly organized and existing under the national banking laws of the United States, empowering it in consideration of certain loans made and to be made by it to said defendant company, to collect all payments due said defendant company by the United States Government, on account of said contracts, for the construction of said revenue cutters.

Your petitioners aver and charge that said assignment and power of attorney to said First National Bank of Richmond, Virginia, is, and was, absolutely void, contrary to the statute of the United States

in such case made and provided, and, if allowed to be continued in force, will work irreparable loss to your petitioners.

(c) Your petitioners further aver and charge that on the 14th day of December, 1899, the said defendant company entered into a contract with certain officers of the United States Government, on its behalf, for the construction for said Government of the cruiser "Galveston;" that said cruiser has not, as yet, been completed and the allowance of said defendant company's claim against the Government thereunder has not been made and a warrant for the payment thereof has not, as yet, been issued. That, notwithstanding, and contrary to the statutes of the United States in such case made and provided, the defendant company, pursuant to resolution of its board of directors, adopted the 9th of June, 1900, did execute and deliver an assignment and power of attorney to the Virginia Trust Company, in consideration of certain loans made and to be made by said trust company to said defendant company, empowering it to collect all payments due said defendant company by the Government of the United States for the construction of said cruiser.

Your petitioners aver and charge that said assignment and power of attorney is absolutely null and void, and if allowed to continue in force and virtue, will work irreparable damage and harm to your petitioners.

Sixth. Your petitioners further charge and aver that their claims and the claims of all other supply lien creditors of said defendant company constitute a prior lien on the personal property of such defendant company other than that forming a part of its plant, and also a lien upon all the estate, real and personal, of such defendant company, and especially that said claims constitute a prior lien upon the "loss claims" and "reservation claims" of said defendant company against the Government of the United States, hereinbefore enumerated, and upon the vessels constructed and being constructed at its yards and docks by said defendant company

88 for said various firms and corporations hereinbefore enumerated are absolutely null and void, and, whether null and void for all purposes, are certainly null and void as against the claims of your petitioners and other supply lien creditors of said defendant company.

Your petitioners further charge and aver that said assignments were executed on the part of said defendant company, as they are informed and believe, by one L. T. Myers, the vice-president and general manager of said company, who has been appointed receiver by this honorable court, and your petitioners are informed and believe that unless some direction is given by this honorable court to said receiver, he will recognize and allow to be enforced the said assignments and power of attorney; that thereby the prior-lien claims of your petitioners and other supply-lien creditors of said company will be divested, and the proceeds of the most available assets of the said defendant company will be diverted from the payment of the claims of your petitioners and such creditors, and thereby your peti-

tioners and said supply-lien creditors will sustain an irreparable loss and damage.

Your petitioners further charge and aver that unless a restraining order and injunction is issued by this honorable court, restraining the various parties to whom such assignments and powers of attorney have been executed and delivered by said defendant company, from exercising any rights thereunder, that the proceeds of such "loss claims" and "reservation claims" will be collected by said parties who hold said assignments and powers of attorney, and applied to their own use and not to the use and benefit of your petitioners and those supply-lien creditors of said defendant company who have a prior lien thereon as aforesaid, and that thereby irreparable loss and damage will be sustained by your petitioners.

Seventh. Your petitioners further charge and aver that at the time that the said bill of complaint was filed, the defendant company had in course of construction various vessels under contracts made with various private corporations, which vessels, not in a completed state, were in the possession of said defendant company and on its yards and at its docks, and are now, or should be, in the possession of the receiver appointed by this honorable court in these proceedings.

Said vessels, so under construction, are as follows:

89 (a) Two steam tugboats, to be named the "Bristol" and "Chester," and known and designated at the yards of said company as "Hull No. 20" and "Hull No. 21," respectively, being constructed and built for the "Pennsylvania Railroad Company" pursuant to the terms of a certain contract made and entered into on the 30th day of June, 1902, between said defendant company and said railroad company, at a cost of \$97,750.00. Said steam tugboats are now at the yards of said defendant company, and are about seventy per cent completed, and are, as your petitioners are informed and believe, now of the fair value of \$68,000.00.

(b) One other steam tugboat, known and designated at the yards of said defendant company as "Hull No. 22," being constructed and built for the New York, Philadelphia and Norfolk Railroad Company, pursuant to the terms of a certain contract of date July 17, 1902, between said railroad company and said defendant company, at a cost of \$68,250.00. Said steam tugboat is now at the yards of said defendant company, is about fifteen per cent completed and is now, as your petitioners are informed and believe, of the fair value of about \$10,000.00.

(c) One tank steamship, known and designated at the yards of said defendant company as "Hull No. 19," being constructed and built for the Standard Oil Company of New York, pursuant to the terms of a certain contract of date November 7th, 1901, between said Standard Oil Company and said defendant company, at a cost of \$439,500.00; said tank steamship being now at the yards of said defendant company, about fifty per cent completed, and being, as your petitioners are informed and believe, of the fair value of about \$220,000.00.

Your petitioners aver and charge that in the contracts made between said defendant company and said private corporations the title to said vessels was and remained in the said defendant company and was so to remain until the finishing and acceptance of said vessels and the delivery of the possession of same to said individuals and corporations.

Your petitioners aver and charge that said vessels in their present state, whether completed or incomplete, are assets of said defendant company and that the supply-lien claims of your petitioners and other supply-lien creditors of said defendant company constitute a prior lien on said vessels, superior in dignity to the claims of said private corporations, for whom said vessels are being constructed as aforesaid, to wit, the Pennsylvania Railroad Company, the New York, Philadelphia and Norfolk Railroad Company, and the Standard Oil Company of New York, respectively, and to the claims of all other persons and creditors of said defendant company.

Eighth. Your petitioners further aver and charge that at the time said bill of complaint was filed, the defendant company had in course of construction for the Government of the United States, sundry vessels which were at its yards and docks in various stages of completion, and were taken possession of by the receiver of this court and are now in his possession, said vessels so under construction for said Government being as follows:

(a) One steel hull seagoing dredge, known and designated at the yards of said defendant company as "Hull No. 17," being built and constructed for said Government pursuant to a certain contract of date September 9th, 1901, between Captain J. C. Sanford, on behalf of said Government, and said defendant company, at a proposed cost of \$252,375.00. Said dredge is now at the yards of said defendant company, and in the possession of said receiver, is about 70 per cent completed, and of the fair value of \$177,000.00, as your petitioners are informed and believe.

(b) One steel steam propeller, known and numbered as "No. 8 R. C. S.," to be called the "Mohawk" and known and designated at the yards of said defendant company as "Hull No. 11," being built and constructed for said Government, pursuant to a certain contract of date April 20, 1900, between said defendant company and L. J. Gage, Secretary of the Treasury, at a cost of \$217,000. Said steam propeller is now at the yards of said defendant company and in the possession of said receiver, is now about ninety-five per cent completed, and is, as your petitioners are informed and believe, of the fair value of about \$200,000.00.

(c) One protected cruiser, to be named the "Galveston" and known and designated at the yards of said defendant company as "Hull No. 7," being built and constructed for said Government, pursuant to a certain contract of date December 14, 1899, between said defendant company and John D. Long, Secretary of the Navy, at a proposed cost of \$1,027,000.00. Said cruiser is now

at the yards of said defendant company and in the possession of said receiver, is about seventy per cent completed, and is, as your petitioners are informed and believe, of the fair value of about \$700,000.00.

Your petitioners aver and charge that under the contracts made between the said defendant company and the said United States of America, hereinbefore mentioned, for the construction of the vessels described and now at the yards of said company as aforesaid, the title to said vessels was and remained in the said company and was so vested at the time that the bill of complaint in this cause was filed, the receiver was appointed by this honorable court and took possession of the assets of said defendant company, including the vessels so being constructed as hereinbefore last described.

Your petitioners further aver and charge that said last described vessels, in their present state, whether completed or uncompleted, are assets of said defendant company, and that the supply-lien claims of your petitioners and other supply-lien creditors of said defendant company, constitute a prior lien on said vessels, superior in dignity to the claims of the said United States of America, for whom said vessels are being constructed as aforesaid, and to all claims of all other persons and creditors of said defendant company.

Ninth. Your petitioners further aver and charge on information and belief, that immediately prior to the filing of the bill of complaint in these proceedings, in consideration of certain advances and loans made to said defendant company by the Government of the United States, the officers of said defendant company allowed certain material, among others, some of the material supplied by your petitioners, to be set aside and placed separate and apart from the other material in the possession of said defendant company, the title to which, by reason of said action, is now claimed by the Government of the United States. Your petitioners aver and charge that this material and all other material for the construction of vessels and for the operation of said company in its yards, were and are subject to the prior lien of your petitioners and other supply-lien creditors of said defendant company: that such action on the part of the officers of said defendant company in so setting apart such material (which constituted the larger part of all the material in the yards of said company at said time) did not operate a sale or conveyance of
92 said material to the United States Government, and did not operate to divert the prior lien of your petitioners and other supply-lien creditors of said company.

Your petitioners further aver and charge, on information and belief, that the receiver of this court recognizing said action as constituting a sale and delivery of said material to the Government of the United States, and that unless proper direction is given him, said material will be removed, or other action taken whereby these petitioners will sustain irreparable loss and damage.

In tender consideration whereof, and for as much as your petitioners are without remedy save in a court of equity, your petitioners

pray that they may be allowed to file their petition and be made parties plaintiff to this suit, and allowed to contribute their proper proportion to the expenses thereof; that the Virginia Trust Company, a corporation; Robert S. Boshier, James N. Boyd, Thomas Atkinson, S. Dabney Crenshaw, J. J. Montague, Henry M. Flagler; the Savings Bank of Richmond, Virginia, a corporation; the First National Bank of Richmond, Virginia, a national banking association and corporation; the Pennsylvania Railroad Company, a corporation; the New York, Philadelphia & Norfolk Railroad Company, a corporation, and the Standard Oil Company of New York, a corporation, be made parties defendant to this cause and required to answer both the bill of complaint and the petition, but an answer under oath is waived; that proper process issue; that all proper orders and accounts be directed and taken; that an injunction may be issued against the said Virginia Trust Company, Robert S. Boshier, Thomas Atkinson, James N. Boyd, S. Dabney Crenshaw, and J. J. Montague, as to the assignments of October 10th, 1902, November 19th, 1902, and November 25th, 1902, and against those parties and Henry M. Flagler as to the assignment of October 10th, 1902, enjoining and restraining them and each of them, their attorneys, agents, and all others from taking any action, collecting any monies, distributing the same or taking any steps whatever by virtue of and under the authority of said assignments and powers of attorney, of said "loss claims" against the Government of the United States, of \$256,000, and that said assignments and powers of attorney of said "loss claims" be by this court declared absolutely null and void; that an injunction may be issued against the said Savings Bank of Richmond enjoining
93 and restraining it from proceeding to collect, or collecting and applying to its own use or other purposes, any sum or sums of money from the Government of the United States under the contract between said defendant company and Captain J. C. Sanford, of date of September 9th, 1901, as aforesaid, under and by virtue of said assignment of date December 20, 1901, and that said assignment may be declared absolutely null and void; that an injunction may be issued against the said First National Bank of Richmond enjoining and restraining it from proceeding to collect or collecting and distributing to its own purposes or other purposes any sum or sums of money under and by virtue of said assignment dated May 11th, 1901, pretending to assign and convey to said bank the contracts and claims thereunder of the said Wm. R. Trigg Company against the Government of the United States for the construction of said two revenue cutters No. 7 R. C. S. and No. 8 R. C. S., and that said assignment and powers of attorney be declared absolutely null and void; that an injunction may be issued against the said Virginia Trust Company, enjoining and restraining it from proceeding to collect, or collecting and applying to its own use, or other purposes, any sum or sums of money from the Government of the United States under the contract between the said defendant company and John D. Long, Secretary of the Navy, of date December 14th, 1899, as aforesaid,

under and by virtue of said assignment adopted pursuant to said resolution of June 9th, 1900, and that said assignment and power of attorney may be declared absolutely null and void; that proper direction may be given the said L. T. Myers, receiver, by this honorable court, whereby the rights of your petitioners as against the assets of said defendant company, and especially as against the said "loss claims," "reservation claims" and said vessels completed and not completed, now being constructed for said private corporations and for the Government of the United States, and against the stock and material on hand of said defendant company, may be fully protected and preserved, and their prior liens fully recognized and enforced; that proper fees may be allowed the counsel of your petitioners for instituting and conducting the proceedings under this petition; and that your petitioners may have such other, further and general relief in the premises as the nature of their case may require.

94 And your petitioners will ever pray.

C. C. KNIGHT & Co.,
By JOSEPH S. KNIGHT.

J. WARREN COULSTON,
WHITEHURST & HUGHES,
Counsel.

STATE OF PENNSYLVANIA,
City of Philadelphia, to wit:

This day personally appeared before me, Archer McLearn, a notary public in and for the city aforesaid, in the State aforesaid, Joseph S. Knight, of the firm of C. C. Knight & Company, and made oath that the statements contained in the foregoing petition are true to the best of his knowledge, information, and belief.

Given under my hand and official seal this 7th day of February, 1903.

[OFFICIAL SEAL.]

ARCHER MCLEARN,
Notary Public.

My commission expires the 2nd day of January, 1905.

*Petition of the Standard Oil Company, filed in court under decree,
July 8th, 1903.*

S. H. HAWES & COMPANY, WHO SUE, &C.,
v.
WILLIAM R. TRIGG COMPANY AND OTHERS.

*To the honorable the judge of the Chancery Court of the city of
Richmond:*

Your petitioner, the Standard Oil Company of New York, a corporation and body politic, would respectfully shew unto your honor that on the 7th day of November, 1901, petitioner entered into a certain contract in writing with the William R. Trigg Company, defendant in the above-entitled cause, whereby said last named com-

pany agreed by the 7th day of November, 1902 (the day named in said contract for the completion of the work), to build for petitioner, according to the specifications attached to and made a part of said contract, at the shipyard of the said William R. Trigg Company, in the city of Richmond, in the State of Virginia, an ocean-going
95 tank steamship, capable of carrying 1,500,000 gallons of petroleum in bulk, for the price of \$439,500, to be paid by petitioner to the said William R. Trigg Company in certain specified instalments at certain specified stages of completion of the work after the same should be accepted and certified to by an inspector and surveyor of petitioner to be stationed at the yard of the said William R. Trigg Company in charge of said work.

A copy of said contract and the specifications therein referred to is hereto attached and is prayed to be read as a part of this petition.

Petitioner would further shew unto your honor that said steamship, which is now upon the stocks in said shipyard of the said William R. Trigg Company, and is designated as "Hull No. 19," with its engines and other appurtenances, is about 53 per centum completed, and that petitioner has already paid on account thereof to the said William R. Trigg Company the sum of \$219,750 in instalments as stipulated in said contract, each of said instalments having been paid as said steamship reached the particular stage of completion at which the same became due and payable according to the said contract and after the inspector and surveyor of petitioner in charge had accepted said work up to that point.

Petitioner would further shew unto your honor that, by the terms of said contract and according to the true meaning and intent thereof, said steamship, including its engines and other appurtenances, is the absolute property of petitioner and has heretofore in its various stages towards completion always been recognized to be the property of petitioner by the William R. Trigg Company, and is, therefore, subject to no labor, supply, or other liens filed against the said William R. Trigg Company or its property.

Petitioner would further shew unto your honor that although said William R. Trigg Company agreed to complete said steamship on or before the 7th day of November, 1902, said company is nearly four months in default under said contract in this particular and that nothing whatever has been done towards the completion of said steamship or any part thereof since the appointment of the receiver in this cause three months ago, to the great loss and inconvenience of petitioner and to the great continuing deterioration of said ship of petitioner as the same stands in its incomplete state in
96 the yard of said William R. Trigg Company; that the said William R. Trigg Company being thus in default, petitioner has the right in that event, under an express provision of said contract, to take possession of said steamship in all its parts and complete it itself or have it completed by other persons.

Petitioner would further shew unto your honor that the receiver of the court in this cause is also in possession of the following prop-

erty belonging to petitioner, stored in one of the store rooms at the yard of the said William R. Trigg Company, namely, one Dean Brothers steam pump, two National Transit Cargo pumps, and one towing machine of the American Ship Windless Company make; that said pumps and towing machine were purchased and paid for by petitioner and were stored at the said shipyard of the William R. Trigg Company for the use of petitioner and are its absolute property, in which the said William R. Trigg Company has never had any interest whatever.

In tender consideration whereof petitioner prays for leave to intervene in the above-entitled cause, to file this its petition therein, and to assert its rights by such pleadings as may be proper; that said steamship in all its parts and the pumps and towing machine above mentioned be decreed to be the absolute property of petitioner free and clear from any and all liens whatever; that the receiver in this cause be required forthwith to complete said steamship in accordance with the contract of the said William R. Trigg Company and the specifications filed therewith; that, in the event that said receiver be unable to complete said steamship in accordance with said contract, petitioner be allowed, pursuant to the right so to do reserved to it in said contract, to complete said steamship or have the same completed by other persons, and to that end that possession of said steamship in its present stage of completion be in all its parts surrendered by receiver to petitioner free and clear from all liens; and for general relief.

And petitioner will ever pray, &c.

STANDARD OIL CO. OF NEW YORK,
By COKE & PICKRELL, *Its Counsel*.

This agreement, made and concluded this seventh day of November, in the year of one thousand nine hundred and one, between
97 William R. Trigg Company, of Richmond, Virginia, party of
the first part, and the Standard Oil Company of New York,
of the city and State of New York, of the second part,

Witnesseth, that the said party of the first part, for the consideration hereinafter mentioned and contained, does covenant and agree with the party of the second part that it will, on or before the seventh day of November, one thousand nine hundred and two, build and deliver afloat and complete in all respects and ready for service to the party of the second part or its authorized agents or attorneys, at the port of Richmond, Virginia, a steamship of about 1,500,000 gallons carrying capacity of petroleum in bulk, 7-3/4# to the gallon, the same to be adapted in every respect to the uses and purposes of an ocean steamship for carrying petroleum in bulk or other general cargo, constructed according to Lloyd's rules for ocean steamships of her class, except in particulars in which the specifications and plans call for excess of such rules; and to meet all requirements of the United States inspection laws, and according to the plans and

specifications hereto attached, which form a part of this contract; to be constructed subject to the inspection and approval of a superintendent and surveyor to be appointed by the party of the second part, with full power to reject or approve any materials or articles used in the construction or equipment of said vessel, and at any stage of the work before final approval. And the party of the first part further agrees that free access to the work and full facilities for the inspection of same shall at all times be afforded to the said superintendent, surveyor, and their representatives. Said steamship to be substantially built, with the engines and boilers, joiner work, plumbing and painting, and appurtenances complete; fuel for satisfactory trial of the machinery, and also for final trial trip, and to the full point of completion, whether all proper articles and particulars are herein mentioned or not, it being understood that no articles shall be omitted in the construction or equipment of the said vessel, according to the true intent and meaning of the specifications. It is further understood and agreed between the parties hereto that in case of the neglect or failure of the said party of the first part to fulfill the stipulations by them made in this contract, then the said party of the second part is authorized and empowered to direct purchases to be made of all the necessary materials, and to cause the construction and equipment of the vessel to be completed as herein specified and required; and the said party of the first part will be

98 liable to the said party of the second part for any excess of the total cost of the vessel over the prices herein mentioned and specified, to be paid by the said party of the first part.

The party of the second part hereby contracts and agrees with the said party of the first part that for the aforesaid steamship finished, furnished, and completed as herein provided there shall be paid to the party of the first part by the party of the second part the sum of four hundred thirty-nine thousand five hundred (\$439,500.00) dollars; that is to say,

When first material arrives in yard.....	\$21,975.00
When keel is laid.....	21,975.00
When one-quarter frames are up.....	21,975.00
When one-half frames are up.....	21,975.00
When three-quarter frames are up.....	21,975.00
When all frames are up.....	21,975.00
When one-quarter plated.....	21,975.00
When one-half plated.....	21,975.00
When three-quarter plated.....	21,975.00
When fully plated.....	21,975.00
When engine cylinder patterns are completed.....	21,975.00
When engine cylinders are cast.....	21,975.00
When engines are set up in shop.....	21,975.00
When boiler material is in yard.....	21,975.00
When boilers are completed in yard.....	21,975.00
When boilers are in ship.....	21,975.00
When engines are in ship.....	21,975.00
When ship is launched.....	21,975.00
After satisfactory dock trial.....	21,975.00
When vessel is fully completed, ready for sea, and accepted.....	21,975.00

Providing, however, that the above payments shall be made only upon the production of certificates from the superintendent and surveyor to the effect that the work of construction has progressed satisfactorily up to the point at which such payments become due, and before final payment, that the vessel and machinery are satisfactory in all respects.

It is understood that all reference in this contract to vessel completed shall mean fully completed according to the spirit and intent of the specifications and plans constituting part of this contract.

99 It is further agreed by the party of the first part that, should any changes involving extra expense other than that specified in the plans and specifications be deemed necessary during the construction, such alterations may be made only after the party of the second part has directed the same in writing and the amount of such changes has been agreed upon. This, however, shall not release in any way the party of the first part from the agreement to complete the vessel ready for sea according to the plans and specifications with such changes, and has only reference to such changes as may be deemed wise during the operation of this contract. To make such alterations the party of the first part binds itself as fully as if mentioned in the original plans and specifications. The party of the second part also binds itself to pay such reasonable expense for such changes as may be agreed to.

For the true and faithful performance of all and singular the covenants, articles and agreements hereinbefore particularly set forth, the party of the first part binds itself and its successors jointly and severally, and the party of the second part binds itself and its successors firmly by these presents. In testimony whereof, and of the agreement and stipulations herein described, the parties above named have caused this agreement to be executed by affixing their corporate seals, attested by the signatures of their proper officials, the day and year first above written.

WILLIAM R. TRIGG COMPANY,
By LILBURN T. MYERS, [L. s.]
Vice-President.
[L. s.]
[L. s.]

STANDARD OIL CO. OF NEW YORK,
By JNO. D. ARCHBOLD, [L. s.]
Vice-President.

Signed and sealed in presence of
M. J. KELLOGG.

Attest:

CHARLES T. WHITE,
Asst. Secretary.

100 Specifications for a steel screw steamship to carry 1,500,000 gallons oil in bulk at 7-3/4# per gallon.

Dimensions.

Length between perpendiculars.....	360 feet
Beam moulded.....	50 feet
Depth moulded to main deck.....	21 feet 6 in.
Depth moulded to spar deck.....	28 feet 6 in.
Mean draft loaded fully equipped and <i>fully equipped and</i> 350 tons fuel oil.....	21 feet 0 in.

General description.—To be of the spar deck type, with complete steel spar and main decks, to have forecastle, bridge house and house aft, around machinery, as per plan.

Vessel to be built to the highest class of Lloyd's or American Ship Master's Association Rules, and under special survey.

All recommendations made by surveyors during construction, to be carried out to their satisfaction.

Model.—A set of lines and model to be submitted to owners for approval, though this shall not release the builder from his responsibility for the draft, trim and capacity of vessel on lines furnished by him.

Material.—All plating to be of open hearth mild steel, tested to the following specifications:

Tensile strength to be not less than 60,000 more *more* than 66,000 pounds per square inch; limit of phosphorous not to exceed .06%; elongation to be not less than 20% in 8 in.; also to stand the
101 usual forge and bending tests to the satisfaction of owner's representatives. All material must also be inspected and tested at the markers works by an inspector appointed by the owners, and if any material which manifests poor working qualities, as in punching, flanging, bending, etc., will be rejected.

All castings must be smooth and sound, and any steel used in construction of vessel to be thoroughly annealed and tested to Lloyd's or American Ship Masters requirements.

General clause.—The intent and spirit of these specifications is that the contractor shall furnish a general cargo and bulk oil steamship to carry not less than 1,500,000 gallons of oil at a weight of 7-3/4 pounds per gallon, 350 tons fuel, and vessel fully equipped for sea on a mean draft not to exceed 21 ft. It being clearly understood that all material and work of every description in every department required to construct, equip and complete the vessel ready for service in every respect; omitting nothing, even if not herein specified, shall be furnished and done by contractors, except all crockery and glass ware, all bedding, rugs, mats, linen, curtains, galley outfit, towels, linoleum, and cutlery, which will be furnished by owners.

The scantling throughout to be in no case under the rules previously mentioned. Vessel to be classed 100 "A" 1.

The company, or their representatives, shall, during the construction of vessel, have the right to make alterations providing such alterations do not increase the cost, but if they should, there must be a written agreement before such alterations are commenced.

The builders to furnish the company's representative with suitable quarters and desk, and who shall have full access to the vessel, machinery and hull drawings, during construction of vessel. Any detail of hull construction, not fully specified will be carried out according to general practice in oil carrying vessels.

Workmanship.—To be well executed, and submitted to the closest inspection and amended where necessary before coating with paint; it is not, however, intended to prevent the coating of plates
102 inside in the way of frames or between laps, etc. The black oxide or "mill-scale" must removed from the surface before coating or painting, which should be delayed as long as possible.

All stringer plates, sheer-strake, garboard strake and butt straps, etc., when above 10/20 of an inch in thickness to have all holes sufficiently roamed to remove the injurious effect of the punching.

Stem.—Of forged iron or steel, 11" x 2-7/8" tapered at top to 11" x 2-1/2" lower and to be flat taper, of sufficient breadth to allow center keelson angles to run over same at least five feet. The latter to be riveted through stem to keel-plates. Stem must be fair and free from kinks when rivetted up.

Stern frame.—11" x 6-3/4" forged iron or cast steel in one piece with rudder post and running into keel at least 7 ft. connected to center keelson angle same as stem. Shoe of stern frame to be flattened of equivalent area to post, and well curved into same. Rudder braces forged on about apart bushed with lignum vitae. Rudder post to extend to upper deck connected to transom plate by two vertical angles of frame size.

Rudder.—Of cast steel, stock bolted to same by strong couplings with body bound bolts. Pintles of forged steel, lined with brass rudder stock 9-1/2" dia. pintles 5 in. diameter. Suitable stoppers cast on rudder and stern-post, pendant cast on back of rudder with chains fitted to same and properly attached under counter; weight of rudder to be taken by a bearing of approved design and placed on deck. Rudder to ship and unship while the vessel is afloat.

Quadrant.—Of cast steel or best hammered iron about 6 feet radius keyed and clamped to rudder post.

103 *Frames.*—Spaced 24 inches of bulb angles 7 inches x 3-1/2 inches, x 10/20 inches, forward of collision bulkhead, the frames are to be brought gradually together until they reach a spacing of 12 inches at stem; between main and spar deck of bulb angle and plain angle alternately, the same in forecastle. All to be connected to main stringer plate by 8/20 inches, brackets and angles 3-1/2" x 3-1/2" x 8/20". Frames aft of oil compartments to extend to spar deck in one piece. Aft of transom a number of cant frames, properly spaced, to be fitted. Double clips of approved size fitted in

way of all keelsons and stringers. Special care must be taken in beveling frames to preserve flat surface.

Bulkhead frames to be 5" x 5" x 10/20"; edges beveled for caulking; all rivetting of bulkhead frames to be countersink heads well rounded and caulked.

Floors.—27 in. x 10/20 in. for 3/5 length amidship, and 8/20 in. at ends to be increased in depth at ends in the usual manner; oil compartments to be attached to center keelson by gussets and double angles; at ends beyond cargo spaces they are to extend across in one piece. All to be bent up to at least twice their depth at center, except those at extreme ends where increased in depth.

The after floor plates to extend well above the screw shaft, and the after hoods of plating that are to connect to stern frame to retain throughout the same thickness as the midships plates of same strake. Special care must be taken on these parts as regards sound rivetting and workmanship. Those in aft peak to be fitted between double frames extending to main deck.

Keel.—36 in. x 17/20 half length amidship gradually reduced to 13/20 in. at ends, butts double-strapped and double riveted. Straps to extend across in one piece and keelson angles joggled over same. All this work to be rivetted, caulked, and made tight before frames are put up.

104 *Center keelson.*—To be continuous 60 in. x 12/20 in. through oil compartments, bunker, boiler and engine rooms, to after peak bulkhead; through boiler and engine room; keelson to be neatly slotted and fitted down over floors and connected to same by double angles.

Rider plate through boiler and engine room to be connected to center keelson by double angles 3-1/2" x 3/12" x 8/20" foundations for engine and thrust bearing to be connected to top of center keelson.

Side keelsons.—Three on each side, intercostal with double angle bulbs on upper edges, and well bracketed at bulkheads, where cut. At ends of vessels some of these keelsons to be combined and connected by breast hooks at bow and stern. At the side stanchions, the intercostal plates to be high enough to form brackets for same.

Web frames.—24" inches deep, one in each compartment; also in engine and boiler spaces, as required by the rules arranged with three side stringers; the latter bracketted at bulkheads and connected to web frames by diamond plates; all stringers connected at ends by breast hooks and all fitted parallel to sheer line throughout ship.

Shell plating.—Main sheer-strake to be fitted as inside strake, spardeck sheer-strake to be double for 3/4 lengths amidship and to have butt straps outside. Spardeck sheer-strake to have inside straps, double straps to strake below for half length amidships. All other butts to be lapped. Those of bottom and bilge strakes, to and including "G" strake to be quadruple riveted for half length amidships, all other butts to be treble riveted.

Inside row of rivets to be spaced $3\frac{1}{4}$ diameters apart, outside row $3\frac{3}{4}$ diameters.

All laps to be scarphed except where parallel liners can be used.

105 Rivets in frames spaced 6 diameters, in deck beams 5 to $5\frac{1}{4}$ diameters. All other arrangements of butts, rivetting, etc., as per rules.

Stringer plates.—Spar deck stringer plates to have quadruple rivetted butt laps for half length amidship, treble at ends. Main deck stringer plates to have treble riveted laps throughout.

Steel decks.—Upper deck to have treble rivetted butt laps for half length amidships, double rivetted at ends. Main deck to have double rivetted laps throughout, edge seams single rivetted.

Lower decks.—In forehold and aft of engine of $6/20''$ steel, with stringer plates, beams on each frame, stanchions, ridge bars, etc., complete; joined to side plating by $3\frac{1}{2}'' \times 3\frac{1}{2} \times 8/20''$ angle staples and to frames by continuous $3\frac{1}{2}$ in. $\times 3\frac{1}{2}'' \times 8/20$ angle, and to be made water-tight where required.

Expansion trunks.—From main to spar deck in oil compartments, of $7/20$ -in. plating, stiffened as shown on plan. All butts single strapped and double riveted.

Lining pieces.—The space between the plating and the frames to have solid filling or lining pieces in one length, closely fitted; to be of the same breadth as the frames, except in way of bulkheads, where they will be diamond shape, fitted short of adjacent frames, leaving caulking edge all around.

Beams.—Of bulb angle, on every frame with plate knees as required. Those forward and aft of oil compartments to have ridge bars, stanchions etc., as per rules.

106 *Cargo hatches.*—On spar deck $7/20''$ plates with steel covers $7/20''$ thick stiffened by angles, bolted and joined to coaming angles, to have small water-tight hinged doors about $30''$ square with rubber joints, bolts, hinges, etc., ventilating attachments, eyebolts, etc., as required.

Plan of hatches to be submitted to owners for approval.

Bulkheads.—Nine transverse and one longitudinal, to divide cargo space into fourteen oil-tight compartments, and each to be made absolutely tight separately. Longitudinal bulkhead plates to run horizontal, with double riveted edge seams and butts, transverse bulkhead plates to run vertical and have single-riveted edge seams and double-riveted butts; all stiffened by vertical channel bars 7 in. $\times 3\frac{1}{2}$ in. $\times 8/20$ in. spaced 24 in. bracketed top and bottom.

There will be one web frame in each tank on port side of longitudinal, and one on each side of transverse bulkhead in alternate tanks, to extend from bottom to top in one piece; 4 ft. at bottom, 2 ft. at top; all of $8/20''$ plate, connected to bulkheads and horizontal stiffeners by 4 in. $\times 3\frac{1}{2}$ in. $\times 8/20$ in. angles.

There will be three horizontal stiffeners connected to bulkheads and web as shown on plan, except that all brackets, connection, etc., to bulkheads, are to have double angles with wick under same.

All webs and horizontal stiffeners connected by diamond plates, longitudinal bulkhead to be tapered off gradually forward and aft.

All horizontal stringers to be supported by brackets four feet apart. Collision, after boiler, and stuffing box bulkheads to be arranged as required by rules. A water-tight sliding door of approved design fitted in after boiler bulkhead to be worked from main deck. A cofferdam of two bulkheads, of one frame space apart, to be arranged between fuel bunker and after oil compartment.

All vertical and horizontal stiffeners to be connected by plates with manholes, thus providing a box-beam construction.

No. 2 bulkhead to be carried across in between decks with water-tight doors fitted on each side.

107 The forward bulkhead of cofferdam to be fitted between double angle frames and caulked both sides.

Fuel-oil compartment.—To be fitted with necessary wash plates both fore and aft and laterally, to have hatches and covers similar to the other oil compartments, plan of same submitted to owners for approval.

After peak tank.—Formed by main deck, being made a water-tight flat to gave trunk to spar deck, with water-tight scuttle ladder, etc. Also fitted with wash plate, suction, air, and sounding pipes complete.

Double bottom.—Under engines and boilers, with continuous floors and intercostals, to have additional intercostals under engine foundation and boiler saddles as directed. Also division bulkheads to provide for fresh water storage; fitted with all manholes, etc., required.

Coal bunkers.—Of iron with proper stiffening, braces, doors, scuttles, etc. A water-tight door on each side of forward boiler bulkhead in upper between-decks to be fitted for access to reserve bunker space. All tramways and trolleys with buckets, etc., complete.

Bulge keels.—For about 200 feet amidships of bulb angle 12 in. x 3-1/2 in. x 10/20 in. with angle 3-1/2 in. x 3-1/2 in. x 10/20 in., both attached to shell plating by tap bolts and nuts inside, no bolts to pass through frames.

Bulwarks.—3-1/2 ft. high, of 6/20 in. plating, with rail 6 in. x 3 in. x 10/20 in. bulb angles, stanchions 4 ft. apart; gangways to be 108 made where necessary, and all wash ports, mooring chocks, etc., fitted as required.

Mouldings.—Of 3 in. half-round iron, fitted along top edge of sheerstrake bulwarks and around stern, also along bridge sheerstrake and forecastle, all to be carefully fitted in fair lines.

Forecastle.—7-1/2 ft. high, side plating 7/20 in., butts double rivetted; stringer plate 30 in. x 8/20" riveted to beams and attached to side plating by continuous angle 3-1/2" x 3-1/2" x 8/20"; butts single strapped and double rivetted. Water way 15" with margin angle 3-1/2" x 3-1/2" x 8/20"; tie plates of 8/20" fitted under bitts,

capstan, etc. as may be required; deck of 3-1/2" select Oregon pine, well caulked and oiled. There will be steel house of 5/20" plate fitted on each side, with lamp room, storeroom, paint locker, and carpenter shop, with doors of hard wood, brass hinges, locks, books, side lights, shelves, racks, bins, drawers, closets, etc., as directed.

Bridge and after deck house.—Located as shown on plan 7-1/2 ft. high coaming 15" x 8/20", plates 7/20", stiffened by vertical angles 6" x 3-1/2 x 8/20", well bracketed top and bottom. Bounding angles 3-1/2" x 3-1/2" x 8/20". Seam straps 8/20" on outside, to form regular panels, beams of 6" x 6" x 8/20" spaced not more than 26" apart. The entire enclosures made water-tight, and fitted with steel doors made water-tight by rubber strips and six brass clamps, to have extra heavy brass hooks, hinges, locks, etc. One side to have chief officer's room with W. C.; then an open passage; on the other side, saloon, captain's room and bath room; on aft side, steward's room, pantry, and ice house and provision room. All rooms with berth, drawers, washstand, closet, hooks, towel rack, mirror, etc. Desk in captain's room and the officer's room, W. C., and bath-room fixtures and fittings to be of the best type and plumbing first class.

109 *Pillars.*—Fitted of such size and number as may be required

A bridge to be fitted above pilot house, with railing, weather cloth stairway, etc., complete and supported by strong stanchions.

All engine room telegraphs, bell pulls, whistle gear, speaking tubes, etc., to be brought up to the bridge.

Doors in pilot house to be hard wood, with hard wood frame with brass hardware.

Windows in pilot house to be either square, with hardwood sashes and blinds or round brass sidelights, 24 in. diameter. Awning screen fitted around top of pilot house.

Pump room.—Forward of oil compartments in hold, the steel trunk extending to spar deck and companionway on top of same. All bulkheads, trunks, etc., of steel, properly stiffened and made watertight.

Foundations to be prepared for two oil pumps and one ballast and bilge pump; all necessary suction and discharge valves and pipes fitted to hull, as required, and connected to pumps complete.

Fore peak tank.—With water-tight flat on level of lower deck. Upper fore peak fitted with chain lockers, etc. Fore peak tank to have watertight scuttle, wash plates suction, air sounding pipes, etc.

Engine and boiler casings.—Of iron, stiffened by angles, to be neatly finished with buttonhead rivetting on inside; doors in same of iron with brass hinges, locks and fittings.

Foundation for towing machine.—To be fitted on top of aft house, aft of engine skylight, with top plate riveted to beams, strong girder built on deck supported by string stanchions. Towing bitts of cast iron fitted aft of this, and above foundations extended under same.

110 *Side hatches.*—Three on each side of spar deck, 4 ft. x 6 ft. coaming 12" x 7/20", plate connected to spar deck plating by 3" x 3" x 7/20" angles, fitted with watertight steel covers having rubber joints, hinges, bolts, ring bolts, etc., complete.

Scuppers.—Twelve on each side of cast steel, to run out below spar deck sheer-strake. Those on forecastle and deck house to be of 2" lead pipe.

Masts.—Two of steel, 28" diameter at heel, 20" at head, with short tops of Oregon pine. Planting and riveting to be as per rules, all seams neatly caulked.

Substantial mast steps of cast steel, to be fitted and tapped to steel deck. A double oval platform fitted around masts to have not less than six pivots for cargo booms, and to be well supported by gussets, etc. Crosstrees at head of mast to have necessary eyes and fittings, etc., for shrouds and six booms.

Rigging.—Shrouds and stays of steel wire, with turnbuckle, running gear of best Manila, blocks of best make, with roller bearings. Four booms for each mast, with all iron work, guys and blocks complete, of sufficient length to reach all hatches.

Sails.—Of best cotton duck, two stay-sails, two mainsails, leg of-mutton style. Sails' covers supplied for each sail.

Awning with stanchions over bridge house and on each side of aft house.

Fenders.—Two on each side consisting each of a 7" x 1" bar, riveted to shell plating and 3-1/2 in. half round bar topped to flat bar.

111 *Boats.*—To have two metallic life boats, and two wooden boats, with necessary gallows frames, hooks, davits, covers, etc., complete. Also all equipment required by United States laws.

Windlass.—Of Hyde or American Ship Windlass Company's make as may be selected by owners, with capstan on forecastle, chain stoppers and all other fittings, complete.

Anchors and chains.—Anchors of stockless type make to be approved by owners; chains, size and length as per rules; wire hawser instead of stream chain; towing hawser, best make six strands, 37 wires to the strand, 5" circumference, 1,500 feet long. Mooring warps as may be required, of best manila.

Hawse pipes.—Of cast iron suitable for stockless anchors, to be well fastened, braced, and fitted with doubling plates where fitted to shell.

Deck iron work and fittings.—Sixteen mooring bitts of neat and strong design, located as directed: one Ford towing chock; mooring chocks of approved design, those in forecastle to be fitted with water tight covers, and all to be located as directed. All cleats, fair leaders, ring bolts, eye-bolts, leading sheaves, hooks, etc., for working ship, to be supplied and fitted as directed.

Doubling plates fitted under all bitts, the boltholes reamed out and bolts for same turned to a driving fit, where they come into oil compartments.

Painting.—All iron and wood work, except the hard wood, to be painted throughout, inside and outside, two coats of lead paint, and a third coat of such colors as may be selected. The bottom painted with any of the anti-fouling paint, selected by owners.

112 Hard wood finishing done in three coats of hard oil and left a dead finish. All iron works where exposed inside of accommodations, or other places, owners may direct to have two coats of cork dust, and well painted over.

Engine and thrust bearing foundation.—To be built in accordance to plans approved by owners.

Pilot house.—Of steel, to be 7 ft. 6 in. high; fourteen feet long by 12 ft. wide. Coaming 18 in. x $\frac{7}{20}$ " plate connected to tie plates on top of bridge house by 3 in. x $\frac{7}{20}$ in. thick, stiffened by vertical angles 3-1/2 in. x $\frac{7}{20}$ in. well bracketed bottom, spaced 24 in., carlins to be 2-1/2" x $\frac{6}{20}$ " in. angles, with 10 in. x $\frac{6}{20}$ in. stringer plate.

Deck of 1-1/2" clear white pine, beaded underneath.

Floor of 1 in. strips, of white holly and cherry. Sides of house to be finished same as bridge house. The inside of house to be fitted up as owners may direct, with lockers, license frames, racks, boxes for glasses, leather cushions. Chart table, drawers, binnacle with approved compasses. All wood work of quartered white oak.

There also to be fitted, bell pulls, whistle pulls, speaking tubes to captain's, mate's, and engine rooms. Sound and speaking tubes of brass. Brass grab rails fitted as directed.

Testing of tanks, etc.—All oil compartments, cofferdam, fuel oil compartments, to be tested separately, before launching, and each compartment to be made absolutely tight with a head of water 10 feet above top of expansion tanks. All fresh water tanks and double bottom tested to a pressure of 10 lbs. per sq. in. and made watertight.

All work to be made tight, iron to iron, and no foreign substance used anywhere, except as directed by owners' superintendent. Should he discover that such substance has been used, he may order such angles or plates so joined, cut out, and substance removed, and parts to be refitted as directed.

113 *Riveting.*—Size and spacing as per rule, except in cargo spaces where the pitch will be 3 to 3-1/4 diameter. Counter-sinks of uniform size; the same well filled and heads well laid up. Rivet holes to be a uniform distance from edges (not nearer than their diameter) and also between rivets. Rivets in edge seams of decks, bulkheads, gunwhale angles, etc., to be zigzag fashion. All shell rivets to be driven with heavy hammers and finished with light ones to the satisfaction of owners representative.

Caulking.—To be done with extra care, the double bars on cofferdam and end bulkhead to be caulked on both sides. All reaming and caulking where possible, to be done with pneumatic tools.

Galley.—To be located in after deckhouse, fitted with unfinished tile floor. Cooking range with all cooking utensils, also dresser, closets, books, racks, sink, bins, coal, bunker, skylight over range, hot and cold water attachments, galvanized iron steamer connected up complete pump to be supplied and connected to fresh water supply.

Pantry.—Aft of engine hatch, fitted with all necessary closets, drawers, locker, dresser, books, sink with steam connection.

Crews mess room.—On port side, fitted with hard wood table, hardwood floor and finish, and all stools required.

Officers mess room.—On starboard side, with all necessary hard wood furniture, hard wood floor and finish.

114 *Steering engine house.*—In after end of deck house, to be fitted with the necessary gratings, side lights, doors, etc. Also to have stern light of approved design arranged in same.

Crews' quarters between main and spar deck.—Around engine enclosures, fitted in hardwood, with rooms for firemen on one side, for sailors on the other side. Adjoining these are the washrooms and W. C. for each; also a room for the cook, and one for the carpenter.

The crew spaces to be fitted with iron berth framed, wire mattresses, closets, drawers, etc. The washrooms to have cement floors. W. C. bowls and wash bowls and wash troughs of enameled cast iron with good flush tanks.

Pipe fitting and plumbing to be first class. Carpenters and cooks rooms to have iron frame berth with wire mattresses, wash stand, mirror, seat, closet, etc. Crews entrance and stairway to be fitted on one side of deck house.

Engineer's quarters.—Aft of engine room, with room for chief engineer, two assistant engineers, three oilers, and two quarter-masters; also bathroom and W. C. for officers, and small store room. All rooms to have berths, closets, washstands, mirrors, racks, seats, etc. Engineer to have desk.

Bathroom and W. C. all fittings to be first class; also tile floor, good flushing tank, and the plumbing to be of the best; all finished in hard wood.

Light-house towers.—Two of steel, with copper tops, located as directed, of approved design with plate glass and screens.

Plans.—Two sets of detail drawings to be furnished owners.

115 *Steering gear.*—Size and make to be selected by owners. To have extra strong screw steering gear, worked by a steam steering engine; also to have steering wheel, to work by hand. Brake wheel and extra tiller, with relieving blocks to be fitted.

Steering wheel in pilot house to be connected to steering engine by a line of shafting; also brass wheel fitted on top of bridge. Steel wire or chain to be attached to back of rudder, and tacked up on counter.

Hoisting engine.—Size and make selected by owners.

Four of the latest type, double cylinder, straight barrel Gypsy ends; all valves, pipes, etc., fitted as required.

Also all snatch blocks, leads, and other hoisting appliances.

Oil pumps, two.—To be supplied by owners with 10 in. suction, delivered in yard of builders; the latter to put them in and connect them to sea valves, oil tanks and manifolds, and to supply all fittings, valves, vacuum chambers, pipes, floor plates, ladders, gratings, drip pans, etc., to make them ready for work for which they are intended.

to detailed specification to be furnished by owners, also storage battery fitted to run lights about twelve hours.

Engine skylight.—Of steel, with steel covers, fitted with round glass, and with all lifting gear complete.

Machinery specifications for a steel-screw steam-ship to carry 1,500,000 gallons oil in bulk at 7-3/4¢ per gallon.

Machinery.—To be quadruple expansion of open-front design, four cylinders working on four cranks, cylinders to be 21" x 30" x 42" x 63" dia. and 42" stroke. Ports and passages to be proportioned for a speed of 100 revolutions.

120 *Cylinders.*—Of best cast iron, fitted with relief valves, drain cocks, indicator cocks, with all attachments complete; to be lagged with magnesia blocks, not less than 1-1/2" thick, covered with Russia sheet iron and heavy brass strips, forming panels. All cylinders to be arranged for close-grained cast-iron linings, as hard as can be worked; special care to be taken in counter boring cylinders that piston rings may travel above and below same, to prevent shoulders being work in cylinders. Cylinders to be tested with steam at full working pressure and made entirely tight before lagging with Russia and magnesia iron. Cylinder bottoms and heads to be filled with magnesia plastic and covered with iron tapped on.

Valve chests.—To be fitted with working linings of close-grained cast iron as hard as can be properly worked, with steam ports cut out with alternating right and left diagonals bridges of section as may be approved.

Pistons.—Of cast steel, dished type, each piston to be fitted with two narrow packing rings of hard cast iron, cut obliquely, tongued, and covered.

Piston valves.—To be of the piston type and fitted with approved packing rings.

Piston rods.—Of mild forged steel, carefully fitted, to have both taper and shoulder.

Valve gear.—Of the Lang Radial Valve Gear Co. type, with steam reversing gear and all hand levers, etc., complete.

121 *Metallic packing.*—Of such make as may be selected by owners, fitted to all piston rods and valve stems. All stuffing boxes made of approved depth for same.

Connecting rods.—The connecting rods with their bolts will be forged steel, with forked top end, finished all over. They will be not less than 4-1/2 cranks in length; crank pin will be fitted with brasses lined with white metal.

Cross head.—Of forge steel with guide box lined with white metal.

Guide bars.—Of cast iron, cast hollow for the circulation of water, with all pipes, fittings and valves of brass.

Bed plate.—Of cast iron, with lower boxes of brass, upper boxes cast to cap, all lined with white metal; lower boxes fitted up for water circulation through them. Bolts of steel, fitted tight to hold, boxes endways, and nuts to have set screws, to prevent loosening.

Condenser.—Of cast iron, cylindrical type hnd from deck beams with 3/4" best brass tubes 18 B. W. G. tinned inside and outside, tube plates and bolts of Muntz metal; tubes packed with approved packing and screwed glands. Condenser fitted with supplementary feed, shifting valve, drain cocks, soda injection, manholes complete, the number of square feet of cooling surface to be approved by owners.

Main frames.—Back ones, cast iron of box shaped, bolted to bed plate, front ones of forged steel turned and finished with all bosses, etc. required.

122 *Crank shaft.*—Of forged steel, built up in four interchangeable pieces with couplings forged on, crank pins of steel with holes of approved size, drilled axially through them; all couplings, bolts of steel tapered and neatly fitted.

Thrust shaft.—Of steel with not less than eight solid rings for thrust, couplings forged on.

Propeller shaft.—Of steel, covered with brass liners of approved length at stern bearing and stuffing box and copper liner tinned, fitted in between and brass liners caulked to same, outer end of shaft tapered, with feather nut and cap for propeller.

Stern tube.—Of cast iron, well fitted and fastened to propeller post and stuffing box bulk head. Brass bushes, with lignum vitae staves, fitted to both ends.

Thrust bearing.—Of approved design, adjustable both for ahead and astern motion, shoes lined with white metal, bearing is to be well fastened to foundation in ship. Steady bearing of cast iron lined with white metal and well secured to foundation.

Propeller.—Four bladed, of manganese bronze sectional or solid, as owners may select, same to be balanced and eye bolts riveted on counter to handle propeller, size, pitch and shape to be approved by owners.

Turning gear.—A pair of small engines to be fitted to turn crank shaft by means of worm gear; also a ratchet lever, to turn same by hand, to be easily disengaged.

123 *Circulating pump and engine.*—Centrifugal of approved size and make, the runner of the pump will be of composition, perfectly smooth and will have runner balanced. The shaft of Tobin bronze. Pump and engine fitted up with all oiling device required. Bearings lined with white metal. Bilge section fitted to circulating pump with valves and all attachments complete.

Air pump.—Vertical duplex, of Blake's latest design, size not less than 10" x 22" x 15" attached to condenser, with all fittings, hot well, speed regulator, and all other attachments complete.

Feed pump.—Vertical duplex or outside packed plunger pump, of such size and make as may be approved by owners, with all pipes, valves, speed regulator, and other attachments complete.

Fire pump.—Of approved make, size 16" x 10" x 18", cylinder brass lined from head to head. The water piston, valve plates, valve seats, piston rods, etc., of composition or bronze, connected up to

pump out and feed boilers, to empty double bottoms, to fill and empty after peak tank and cofferdam; to be connected to condenser for auxiliary circulating pumps, also to pump on deck, through fire mains and to ash ejector, with all pipes, valves, and fittings required for these purposes to be supplied and connected up complete.

Sanitary pump.—Of approved make, size 6" x 5 1/2" x 7", with composition water end, rod, etc., located in engine room on suitable foundations connected to sea, fresh water tanks, water closets, receiver of approved size and design, also water service and connected to fire mains for deck hose: all pipes, fittings of brass, and connected up complete.

124 *Bilge pump.*—Connected to bilge boxes of approved design and to discharge overboard; bilge boxes of cast iron with brass valves, stems and seats and mud boxes fitted with strainers.

Donkey boiler feed pump.—Size 8" x 4-1/2" x 10" brass lined from head to head and brass rod and fittings placed near donkey boiler to feed same and connected up to test main boilers, with all pipes, valves, and fittings complete.

Injectors.—One for each main boiler and one for donkey boiler of approved make and size; suction connected to water bottoms and sea; hot water discharge in engine room and on deck for 1-1/2" hose; all pipes, valves and fittings of brass and connected up as directed.

Water service.—All pipes and fittings of brass over crank pins, thrust and steady bearing, circulation through crank shaft bearings, guides, etc., all pipes, valves, swivels, etc., of brass and fitted up as directed.

Piping, etc.—Main steam pipe of seamless drawing or lap welded steel pipe with wrought steel flanges of approved thickness, bored, faced, grooved and recessed, with the pipes rolled tightly into flanges and headed over to fill recess flush with face of flanges.

Main steam pipe will be fitted with slip joint of approved design. All other piping above 2" of copper, except otherwise specified, all piping 2" and below of brass, with brass fittings. Bilge pipes of lead, all fitted with strainers, accessible for cleaning; all valves not of solid brass, to have brass stems, valves, and seats; those of 2" and below to be wholly brass of extra heavy flanged valves; outboard delivery valves as required, fitted in ship's side with brass fittings and all gear required. A complete plan of piping to be submitted to owners for approval.

Sea connection.—As may be required, of cast iron, fitted to ship and arranged as directed. All strainers of heavy brass, to be accessible for cleaning and to have ample area.

Hydrant.—One fitted in fire room with hose and fittings complete.

Main stop valves.—Of cast iron, extra heavy, fitted with bronze stems, valves and seats, all flanges scored.

Throttle valve.—Of extra heavy cast iron or steel, of the double poppet type, with bronze seat and valves. Stem of forged steel. Valve to be of such construction that tightness will be secured under all pressures. All levers, etc., supplied and connected up as directed.

Blow-off valves.—There will be one composition bottom below valve on each side of ship, fitted with brass spigot and plate on outside of ship's side. Surface blow with all connections fitted to each boiler.

Governor.—Of such design as owners may select to be furnished and connected up complete.

Evaporator.—A 20-ton evaporator of the Williamson Bros. or other approved make to be furnished and connected up to feed heater, condenser, double bottom, etc., as directed. The evaporator will be covered with magnesia and galvanized iron and will be fitted with a safety valve, feed check valve, steam stop valve, steam gauges, glass water gauge, salinometer pot, and below valve, located and fastened as directed.

Feed water heater.—Of such size and make as may be selected by owners, located in upper engine room and connected up complete.

Filter.—Of such size and make as owners may select, connected up as directed by owners.

Gauges.—There will be the following gauges in polished brass cases, suitable engraved to show to what they are connected. One guage for each boiler and one in engine room, graduated to at least 420 pounds, one for first intermediate, one for second intermediate, one for low pressure receiver, one revolution counter and one eight day clock of approved make, all cases conforming with each other, mounted on a neat designed cast plate located in engine room as directed and all connected up complete. There will also be supplied 4-1/2" brass gauges for sanitary and fire pump, also for all reducing valves.

Lubricators.—Of approved construction, fitted to all parts of main and auxiliary engines as required, sight feed for cylinders and telescopic feeders to all crankpins boxes.

Indicators.—There will be furnished four Tabor indicators, with all springs and attachments, and working gear for same fitted to each engine.

Hoisting gear.—For hauling cylinder covers, valve chest covers, condenser heads, evaporator heads, thrust shoes, etc., with all turn-buckles, hooks, eyebolts, etc., complete.

127 *Reducing valves.*—Of approved make fitted in auxiliary stem pipes, steering engine, dynamo engines, etc. complete.

Steam traps.—Of approved make and size furnished and connected up as directed.

Ash hoister.—One of approved make, fitted up with all gear complete.

Engine room.—Supplied with one enamelled washstand connected up complete, also one hardwood desk and blackboard, located as directed.

Two steel marine boilers of Scotch type.—They will be of 16' 0" mean diameter by about 11' 0" length of shell. Each boiler will have a total heating surface of not less than 2,700 square feet, and a total grate surface of 88 square feet. Each boiler will have four Morrison suspension furnaces of the interchangeable type A, 3' 8"

internal diameter. The boilers to be proportioned throughout for 210 lbs. working pressure and constructed in accordance with U. S. inspector service and Lloyds rules.

All rivet holes must be fair, and no drift pins used in construction of said boiler.

Boiler material.—All plates used in construction of the boilers will be of the best open-hearth steel. The rivets will be of open hearth or Clapp-Griffith steel; all material will be tested as elsewhere specified.

Boiler shells.—Each boiler shell will be made in one course, without circumferential joint and each course will consist of four plates $1\frac{1}{2}$ " thick.

128 *Boiler heads.*—Back heads of the boilers will be made of two plates. The front head will be flanged outwardly at the furnaces, and inwardly at the circumference; the back heads will be flanged outwardly.

Boiler tube sheets.—They will be $\frac{5}{8}$ " thick at front and at the back. They must be accurately parallel, and all tube holes will be drilled and slightly rounded at the edged.

Boiler tubes.—They will be of charcoal iron, the best that can be obtained on the market, and of such make as the owners may select.

There will be not less than 390-3" external diameter tubes and to be No. 8 B. G. W. in thickness, swelled, $\frac{1}{16}$ " at front head.

They will all be expanded in the tube sheets and neatly beaded over, and caulked in on head.

Combustion chambers.—There will be four combustion chambers in each boiler, made of $\frac{9}{16}$ " plate at top, sides, bottom, and back; the tube sheet will be as before specified. The top of the combustion chamber will be braced by cast-steel girders as per rule, same to be sound and free from flaws.

The holes for all screw staybolts, in plates of combustion chamber and shell, will be drilled and tapped in both sheets together in place.

Boiler bracing.—The combustion chamber will be stayed to the shell and back head by screw stay bolts swelled at ends, screwed in both sheets, caulked and fitted with hex. nuts, the nuts to be used on bevelled washers where stays do not come square with the plates. The butts of the upper through braces will be forged or cast steel with flang's forming washer.

The threads will be cut away on the outside of the nut, forming a chamber. When the nut is set up in place, the rivet holes will be drilled in the heads, and the nuts riveted to it and caulked around the edges, and the cupped end of the braces riveted over into the nuts. All screw stays and all screw braces will have raised threads. All braces and stays to be made without welds.

Riveted joints.—The longitudinal joints of boiler shell will be butted with $1\frac{5}{8}$ " strap outside and $1\frac{3}{8}$ " inside, and treble riveted with $1\frac{5}{8}$ " rivets. Joints of heads with shell to be doubly riveted, and joints of heads, furnaces, and combustion chambers will be single riveted.

Rivets will be of Clapp-Griffith steel, with heads in accordance with the U. S. Navy standard.

Edges of all plates in cylinder shell and all flat plates where not flanged will be planed.

Edges of all flanges will be faired by chipping or otherwise, as may be approved.

Plates in cylindrical shell must not be sheared nearer the finished edge than one-half the thickness of the plate along the circumferential seams, and not nearer than one thickness along the longitudinal seams. No plates must average less than the specified thickness along the longitudinal seams.

All rivet holes in shell plates will be drilled in place after bending.

After the holes have been drilled the plate will be separated and have the burrs around the holes carefully removed.

Hydraulic riveting will be used wherever possible.

In parts where hydraulic riveting cannot be used, the rivet holes will be coned and conical rivets used. Seams will be caulked on both sides in approved manner, and special care must be taken not to cut any parts of the boilers by chipping and caulking.

Longitudinal seams will break joints.

Furnaces.—Three Morrison inter-changeable suspension furnaces, type "A," 44" diameter by 5/8" thick.

They must be perfectly circular in cross section at all points.

130 *Boiler manholes and handholes.*—There will be five manholes in each boiler.

All manholes to be flanged or have stiffened rings.

The manhole plates will be cast or mild steel in dish form. Each plate will be secured by two wrought-iron dogs and the two 1-1/4" studs, with square nuts.

Each plate will have a convenient handhole.

All plates, dogs, and nuts will be indelibly marked to show to what holes they belong. Handholes to be fitted complete as directed, and all plates to be neatly fitted.

Grate bars and bearers.—The grate bars will be of cast iron and of an approved pattern.

They will be so fitted as to be readily removed and replaced without hauling fires. The bars at the sides of furnaces will be made to fit the corrugation.

The bars will be made in two lengths, resting on the dead plate in the front and on the bridge wall in the rear of each furnace.

They will be supported in the middle by an approved framework, made to fit in the corrugations.

Bridge walls.—They will be made of cast iron, of an approved design, and so fitted as to be readily removable. They will be covered at the top with fire brick or other approved refractory material.

Furnace fronts.—They will be made with double walls of wrought iron or steel, bolted to light frame. The space between the two walls will be in communication with the fireroom.

internal diameter. The boilers to be proportioned throughout for 210 lbs. working pressure and constructed in accordance with U. S. inspector service and Lloyds rules.

All rivet holes must be fair, and no drift pins used in construction of said boiler.

Boiler material.—All plates used in construction of the boilers will be of the best open-hearth steel. The rivets will be of open hearth or Clapp-Griffith steel; all material will be tested as elsewhere specified.

Boiler shells.—Each boiler shell will be made in one course, without circumferential joint and each course will consist of four plates $1\frac{5}{8}$ " thick.

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Boiler tube sheets.—They will be $5/8$ " thick at front and at the back. They must be accurately parallel, and all tube holes will be drilled and slightly rounded at the edged.

Boiler tubes.—They will be of charcoal iron, the best that can be obtained on the market, and of such make as the owners may select.

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They will all be expanded in the tube sheets and neatly beaded over, and caulked in on head.

Combustion chambers.—There will be four combustion chambers in each boiler, made of $9/16$ " plate at top, sides, bottom, and back; the tube sheet will be as before specified. The top of the combustion chamber will be braced by cast-steel girders as per rule, same to be sound and free from flaws.

The holes for all screw staybolts, in plates of combustion chamber and shell, will be drilled and tapped in both sheets together in place.

Boiler bracing.—The combustion chamber will be stayed to the shell and back head by screw stay bolts swelled at ends, screwed in both sheets, caulked and fitted with hex. nuts, the nuts to be used on bevelled washers where stays do not come square with the plates. The butts of the upper through braces will be forged or cast steel with flang's forming washer.

The threads will be cut away on the outside of the nut, forming a chamber. When the nut is set up in place, the rivet holes will be drilled in the heads, and the nuts riveted to it and caulked around the edges, and the cupped end of the braces riveted over into the nuts. All screw stays and all screw braces will have raised threads. All braces and stays to be made without welds.

Riveted joints.—The longitudinal joints of boiler shell will be butted with $1-5/8$ " strap outside and $1-3/8$ " inside, and treble riveted with $1-5/8$ " rivets. Joints of heads with shell to be doubly riveted, and joints of heads, furnaces, and combustion chambers will be single riveted.

Rivets will be of Clapp-Griffith steel, with heads in accordance with the U. S. Navy standard.

Edges of all plates in cylinder shell and all flat plates where not flanged will be planed.

Edges of all flanges will be faired by chipping or otherwise, as may be approved.

Plates in cylindrical shell must not be sheared nearer the finished edge than one-half the thickness of the plate along the circumferential seams, and not nearer than one thickness along the longitudinal seams. No plates must average less than the specified thickness along the longitudinal seams.

All rivet holes in shell plates will be drilled in place after bending.

After the holes have been drilled the plate will be separated and have the burrs around the holes carefully removed.

Hydraulic riveting will be used wherever possible.

In parts where hydraulic riveting cannot be used, the rivet holes will be coned and conical rivets used. Seams will be caulked on both sides in approved manner, and special care must be taken not to cut any parts of the boilers by chipping and caulking.

Longitudinal seams will break joints.

Furnaces.—Three Morrison inter-changeable suspension furnaces, type "A," 44" diameter by 5/8" thick.

They must be perfectly circular in cross section at all points.

130 *Boiler manholes and handholes.*—There will be five manholes in each boiler.

All manholes to be flanged or have stiffened rings.

The manhole plates will be cast or mild steel in dish form. Each plate will be secured by two wrought-iron dogs and the two 1-1/4" studs, with square nuts.

Each plate will have a convenient handhole.

All plates, dogs, and nuts will be indelibly marked to show to what holes they belong. Handholes to be fitted complete as directed, and all plates to be neatly fitted.

Grate bars and bearers.—The grate bars will be of cast iron and of an approved pattern.

They will be so fitted as to be readily removed and replaced without hauling fires. The bars at the sides of furnaces will be made to fit the corrugation.

The bars will be made in two lengths, resting on the dead plate in the front and on the bridge wall in the rear of each furnace.

They will be supported in the middle by an approved framework, made to fit in the corrugations.

Bridge walls.—They will be made of cast iron, of an approved design, and so fitted as to be readily removable. They will be covered at the top with fire brick or other approved refractory material.

Furnace fronts.—They will be made with double walls of wrought iron or steel, bolted to light frame. The space between the two walls will be in communication with the fireroom.

The inner plate of furnace front will be perforated as may be directed. The dead plates will be made of cast iron and fitted so as to be easily removable. The door openings will be as long as practicable.

- 131 *Furnace doors.*—The furnace doors must be protected in an approved manner from the heat of the fires.

The perforations in doors and linings will be as such as may be directed.

Each door will have a small door near its lower edge for slicing fires. There will be two hinges to each door of wrought iron.

There will be approved arrangements for preventing the door from sagging and for holding them open when firing.

Ash pit doors.—They will be made of 1/8" wrought iron or steel stiffened with angle or channel iron. They will be furnished with suitable buttons, so as to close the ash pit tightly when the furnace is not in use. Each door will have two wrought iron becketts to fit hooks on fronts.

Lazy bar.—A lazy bar with necessary lugs will be fitted in the front of each ash pit. There will also be portable lazy bars for the furnaces.

Uptakes.—They will be made of double shells of wrought iron or steel No. 8, B. W. G. built in approved manner and to suit steamer. To be well bolted to boiler heads and to smoke-pipe base. Outside of the uptake will be a jacket, enclosing a 3" air space. This jacket will be made of No. 12 B. W. G. iron and will extend from the top of the uptake doors to the top of the uptake.

Uptake doors.—The uptake doors will be made of double shell of iron of the same thickness as uptakes, and have a three inch (3") air space.

The hinges and latches will be made of cast steel or wrought iron. Each door will have an eyebolt near its top for handling, and one near the bottom for convenience in opening doors.

- 132 *Material.*—All plates, etc., for use in construction of the boilers must be made of open-hearth process. There shall accompany each plate a test piece 14" long by 2" wide.

Tensile strength of shell plates.—Tensile strength between 60,000 and 66,000 lbs. per square inch, with an elongation of at least 25 per cent in 8 in.

Tensile tests of furnace and flange plates.—Plates for combustion chamber, furnaces, and those forming part of the heating surface of the boiler, and plates that are to be flanged shall not be less than 50,000 nor more than 60,000 lbs. per square inch, and an elongation in 8" of not less than 28 per cent longitudinally.

Quenching tests.—One piece cut from each shell plate, furnace, or flange plate, shall be cut 2" wide and 12" long, and may be trimmed to size with machine; the pieces will then be heated to a cherry red, and plunged into water at a temperature of 80 degrees, and then bent around a curve of which the diameter is not more than one and one-

half times the thickness of the piece tested, without showing any cracks.

Rivets.—Shall be of steel, made by open hearth process.

Tests for rivets.—Rivets may be taken at random and submitted to the following tests: Flattened out cold under the hammer, to a thickness of one-half the diameter without showing any cracks or flaws, the heat test to be the working heat when driven.

Rivets will also be bent cold into the form of a hook with parallel sides without showing cracks or flaws.

All material must be free from laminations, cracks, scabs, or any other defects; otherwise they will be rejected.

133 *Tensile and elongation tests.*—Rivets used in construction of boilers shall have a tensile strength of from 58,000 to 66,000 lbs. per square inch with an elongation of not less than 26 per cent in 8 ins.

Workmanship.—All material and workmanship to be first-class, and to the satisfaction of owners of their representative who shall have the privilege of inspecting the same at all times.

And special care must be taken to have all shell butts fitted together tight; also all straps, etc., fitted to the satisfaction of the company's representative.

Boilers will be well bedded in strong saddles and fastened to same by tap bolts tapped into shell with nuts on inside; also braced at top as directed.

All necessary mountings, safety, stop and check valves, water gauges, gauge cocks, etc., also Bloomsburg or other approved make of circulator connected to each boiler, with all attachments from donkey boiler and feed pipes complete.

Smoke stack.—Not less than 80 feet above grates, to be double with 4" air space between. Damper fitted with handling gear run to engine room; also rings, eyes, two sets of guys, etc., with two 8 ft. letter S, of neat design fastened on each side, donkey smoke stack to be run inside of main stack, leading to top and well fastened to same and fitted with damper and handling gear.

Donkey boiler.—Of an approved water tube type, with 40 square feet of grate, & 1200 square feet of heating surface, constructed for a working pressure of not less than 200 lbs. per square inch; to pass U. S. inspection, placed in boiler hatch on main deck, with all fittings and mountings complete.

134 *Ash ejector.*—Of such type as owners may select, to be supplied, placed in stoke hold, with all pipes, valves, etc., and connected up complete.

Felting.—Main and donkey boilers to be covered with not less than 1 1/2" inches of magnesia covering, all around and protected by a casing of heavy galvanized iron, made water tight and held on by iron bands. Boilers must be tested with full head of steam for 48 hours before covering same, all steam exhaust and feed pipes to be covered with magnesia and canvas sewed neatly over same. All pipe coverings to have three coats of lead paint.

Oil, grease, and waste tanks.—One oil tank of 160 gallons. Two of 60 gallons each, one grease tank to hold 250 lbs., one waste tank to hold 250 lbs. waste, and three measuring tanks for oilers use to hold about four gallons each. All tanks made of heavy galvanized oil and well stayed, piped to spar deck with galvanized iron pipe and fittings, all oil tanks to have lock cocks; grease and waste tanks to have brass pad-locks. Oil tanks to have large hand holes near bottom for cleaning same; also to have large galvanized iron drip pans for each tank.

Engineer's storeroom.—Fitted up as may be required by the engineer in charge, with vise and work bench, shelving, lockers, drawers, hooks, reels, etc.

Ladders, platforms, etc.—Around engines and boilers as may be required to give access to all parts, arranged to give maximum of air and light to lower engine room, to have all necessary hand rails and fittings of polished brass or iron. Floors of grooved plates.

Drip pans.—Fitted in crank pits, under guides, and where needed, to collect oil.

135 *Drip tank.*—In fireroom of approved size and design to collect drainage from safety valves, gauge cocks, etc., connected to condenser and double bottom.

Painting.—All parts to have three coats of lead paint, of such color as may be selected.

Tools.—A complete set of double wrenches, to fit all parts of machinery; 1 key wrench; one 12" screw wrench; one 9" screw wrench, all fitted in suitable racks in engine room; one spanner for propeller nut; 3 assorted packing hooks; 3 packing screws; 3 gauge tools; and 3 gland tools for packing condenser tubes; 4 fire hose; 2 ash pan hose; 9 slice bars; 3 pricker bars; 3 devil claws; 3 coal shovels for main boiler; 1 fire hoe; 1 slice bar and 1 coal shovel for donkey boiler; 2 ash buckets; 2 coal buckets; 1 coal hammer; 1 steam tube cleaner with hose and connection; 1 hose for cooling ashes; 1 salinometer with pot and thermometer, also pipe connection to each boiler; 4 sealing bars; 4 steel tube brushes; 4 tube scrapers; 1 mud hoe; 1 tube brush for donkey boiler; 4 hooked scrapers; 1 sledge; 2 copper hammers; 1 chipping hammer, all handled; half dozen assorted caulking tools; 1 center punch; 6 sets of patent tube stoppers; 6 long and 6 short steel wedges for joints; 2 crow bars; 4 pin punches; 3 scribers; 1 ratchet brace with 12 assorted drills; 3 flogging chisels; 6 files; 6 chisels; 6 pair gas pipe tongues; 1 six inch vise; 3 beam clamps; 3 callipers; 2 compasses; 1 hand saw; 1 sheet tin shears; 1 screw driver; 1 rubber cutter; 2 copperdrifts; 3 drips in engine room for cans; 1 brass syringe; 6 oil cans; 12 squirt cans; 4 funnels; 1 quart and 1 pint oil measure; 6 large fixed engine room lamps; 6 bunker lamps; 6 lamps for boilers; 12 petticoat lamps; 12 globe lamps; all of brass; 4 gauge cock lamps; 6 lamp trimmers.

One portable forge; 1 anvil; 1 dudgeon expander for main boilers; 1 for donkey boiler; 1 hydraulic jack to lift 10 tons and one to lift 5 tons.

One-half dozen of Smith tongues, one-half Smith's swages;
 136 one 14 lb. sledge and one blacksmith hammer, all handled;
 6 flat chisels; 6-14" files; 3-14" flat smooth files, all handled.

10 dozen bolts of assorted sizes; one hundred washers, assorted iron, tin plate, etc. of various kinds and sizes, suitable for engineer's use.

Spare parts.—Four propeller blades, completely fitted; a set of crank pin brasses, cross head brassed and main crankshaft brasses with their respective bolts. Bolts and nuts and studs, a few of each kind, nine bolts and butts for piston followers. A set of valves for each pump, also guards and studs for same; a set of grate bars, bearer bars, bridge wall plates, front and door liners; two dozen tubes for main boilers; one doz. tubes and spare set of fittings for donkey boiler, two dozen condenser tubes, also ferrules for same; one dozen gauge glasses; one set of coupling bolts; one crank pin; 3 crankshaft sections of different lengths; one valve stem; one eccentric strap.

Plans.—A plan of main engine and boilers to be submitted for approval by owners.

Petition of Standard Oil Company, filed in court under decree of July 20th, 1903.

In the Chancery Court of the city of Richmond.

S. H. HAWES & COMPANY, WHO SUES, ETC.,	}
v.	
WILLIAM R. TRIGG COMPANY AND OTHERS.	}

To the honorable judge of the Chancery Court of the city of Richmond:

The humble petition of the Standard Oil Company of New York, a body politic and corporate, would respectfully show unto your honor that the defendant, William R. Trigg Company, is under contract with petitioner to build for it an ocean-going oil-tank steamer, to be called the "Lucas," the hull of which is designated at the
 137 yards of said company as "Hull 19"; and that said last named company had made considerable progress upon its construction, when, by the appointment of a receiver in this cause on the 23rd day of December, 1902, work upon said vessel was stopped, and, in the six months which have since elapsed, has never been resumed.

Prior to the appointment of said receiver, petitioner made to said William R. Trigg Company the payments called for in the said contract as the several stages in the progress of said work, specified in the contract, were reached; and in this way petitioner has made, in all, payments aggregating \$219,750.00; each of said payments having been made, as provided in said contract, only after the work and material at each stage at which a payment became due had been inspected,

approved, accepted and certified to in writing by the inspector of said petitioner stationed at the yards of said company in charge of said work.

Petitioner would further show unto your honor that in case of default on the part of said Trigg Company, under its contract as aforesaid, the right was reserved to petitioner, by that instrument, to take the necessary steps to have said vessel completed at the expense of said company; and that after the said William R. Trigg Company had so defaulted and a receiver had been appointed in this cause, petitioner filed its petition herein asserting its title to said vessel in all its parts, and to the material assembled in said yards and assigned to said vessel, and, under the provisions of the contract above referred to, prayed the court to instruct its said receiver to deliver said property to said petitioner, free and clear of all claims in this suit, in order that it might supply the default of said company, complete its vessel, and have the possession and enjoyment of its property according to the right so plainly reserved to petitioner by their said contract.

Petitioner would further show unto your honor that one Knight and Company, claiming to be supply lien creditors of the William R. Trigg Company, and suing for the benefit of themselves and all other supply lien creditors of said company, has filed its petition in this cause, the same being in the nature of an amended and supplemental bill, claiming, among other things, that petitioner's vessel, and all other vessels under construction at the yards of said company,

including those being built for the United States Government, 138 were the property of the said William R. Trigg Company and therefore subject to their alleged supply liens; although, as to petitioner's vessel at least, the fact is directly to the contrary, it being the plain and manifest intent, effect and meaning of said contract, as well as the construction always put upon said contract by said company in its dealings with petitioner, that the title to said ship and material assigned to it, as fast as the work reached the several stages of completion specified in said contract, and was inspected and accepted by petitioner's inspector and, upon his certificate, paid for by petitioner, vested absolutely in the petitioner free and clear of the claims of all creditors of the William R. Trigg Company, whether supply lien creditors or not.

Petitioner would further state that said vessel, and especially the hull thereof and the plates and shapes intended for it, are rapidly deteriorating. The fact is that even before the appointment of the receiver, the vessel had been kept upon the stock and the material in the yard, exposed to the weather in an incomplete condition, much too long for its good; the contract providing that said vessel should be completed by the 7th of November, 1902, when, as a matter of fact, it was not half completed when that time arrived; and for the six months since the appointment of the receiver, no work whatever has been done upon said vessel, or any part thereof; and during all of that time, both before and after the appointment of the receiver.

the hull has been standing upon the ways and the plates and shapes lying upon the ground of said yard, both exposed to the weather without any protection whatever. The result is that said vessel has already been seriously injured, and, unless something is immediately done to arrest the damage, it will proceed with accelerated pace until said vessel in a short time will become wholly unfit for the purpose for which it was destined, namely, an oil-tank steamship.

Petitioner would further state that if the only means which would prove at all effective to prevent constant and increasing deterioration of the hull, plates, and shapes of said vessel should be taken, viz, thorough scraping and painting with a heavy coat of red lead, the cost would be very heavy in the first instance, and the painting, the main item, would in all probability have to be repeated many times before the many claims and liens, involving the decision of an
139 unprecedented number of complex and difficult questions, could be finally adjusted in this suit.

In addition thereto, although the item is a comparatively small one, involving only the cost of two or three hundred dollars, the engines, which have not been assembled or installed in the vessel, would have to be protected against rust by being thoroughly covered with oil.

The inevitable result would follow that after three or four years, more likely five or six years, when said vessel is finally decreed to petitioner, it would come into its hands burdened with this heavy charge expended for its preservation in the interval. Or, if the supply lienors succeed in their contention, it would then have to be sold for their account subject to this burden, although it is in a better condition for sale now than it could possibly be at that remote time, supposing all these expensive precautions to have been taken.

Petitioner would further show unto your honor that the only value said vessel could possibly have except as old iron would of course depend upon the ability to complete it. But as petitioner is informed, the court cannot have it completed by its receiver for lack of funds, and no money can be borrowed for that purpose upon receiver's certificates, even though said certificates should be declared to be a first lien upon said vessel; for, in the first place, no one would advance money upon a vessel, the completion of which, from the peculiar situation surrounding it, would be attended with so much doubt, difficulty, and increased expense; and, in the second place, it is at least doubtful, so petitioner is advised, whether the court has power to issue receiver's certificates and declare them a paramount lien, when the money to be derived from them is to be expended in completing an unfinished private work. The fact is that if the William R. Trigg Company were now a going concern, and offered every facility for completing said vessel, it could not be completed for many thousands of dollars over and above the price named in the contract; and this increased cost of completion would be further augmented by the fact that the yards are not organized and workmen would have to be brought from a distance merely for this particular

job. In fact, the only feasible way in which said vessel could be completed at all is merely to do such work upon it at the yards of the William R. Trigg Company as would put it in a condition to be removed to some other shipyards and there completed.

140 In view of these facts, petitioner is of the opinion and so states that if anything substantial is to be preserved for the successful litigation against the remote day when this cause is finally decided, it is absolutely necessary that said vessel, in all its parts, with the material assembled at the said yards and assigned to it (an accurate list of which material will be found upon the inventory filed by the receiver in this cause), should be, without further delay, put up at auction and sold for the benefit of whom it may concern, and the purchase money deposited in bank to the credit of the court in this cause, at interest, to await the final decision of the claim which the supply lien creditors assert petitioner's vessel; providing in the decree of sale that the purchaser shall have leave to use plant and tools of the William R. Trigg Company so far as necessary for the completion of said vessel. And petitioner states that if, instead of pursuing this course, this perishable personal property should be kept until all questions as to liens and conflicting claims have been finally passed upon and decided, it will result in an enormous loss to all parties concerned, if not to the sacrifice of practically the whole subject matter of this particular controversy, without chance of gaining any proportionate benefit in return.

Petitioner, in open court, on the 14th of July, 1903, gave the counsel for the different parties there assembled notice that on the 23rd day of the same month it would apply to the court for a decree to the above effect, and has, in addition to said notice, mailed copies of this petition to each of said counsel several days in advance of the day fixed for said application.

Wherefore, petitioner, asking leave to file this, its petition, prays that the same may be treated as a petition or written motion as may best subserve its purpose; that any party interested desiring to do so may have leave to answer it; that said vessel, in all its parts, including the material assigned to it, be sold as above stated, and for general relief.

And petitioner will ever pray, etc.

STANDARD OIL COMPANY OF NEW YORK,

By Counsel.

COKE & PICKRELL,

Counsel for Petitioner.

141 *Petition of Pennsylvania Railway Company, filed in court under decree of March 21st, 1903.*

In the Chancery Court of the city of Richmond.

S. H. HAWES AND COMPANY

v.

THE WILLIAM R. TRIGG COMPANY ET AL.

To the Honorable DANIEL GRINNAN, *Judge of said Court*:

The petition of the Pennsylvania Railroad Company respectfully shows unto your honor—

1. That on the 30th day of June, 1902, it entered into a contract with the William R. Trigg Company, of Richmond, Virginia, for the construction of two steam tug boats of the "Lancaster" class at Richmond, Virginia, upon the terms and conditions set forth in the written agreement of that date, a true copy whereof is herewith filed, marked "Exhibit A," and prayed to be read and taken as a part of this petition.

2. That by the second clause of said contract your petitioner agreed to pay to the said the William R. Trigg Company, for the work done and material furnished, in conformity with this agreement, upon and immediately after inspection and written certification of approval thereof by duly authorized inspector or inspectors of your petitioner, the sum of \$97,750.00 for the two boats (being \$48,875.00 per boat) in ten (10) partial payments, as follows:

When 1/10 of the work is performed.....	\$10,000.00
When 2/10 of the work is performed.....	10,000.00
When 3/10 of the work is performed.....	10,000.00
When 4/10 of the work is performed.....	10,000.00
When 5/10 of the work is performed.....	10,000.00
When 6/10 of the work is performed.....	10,000.00
When 7/10 of the work is performed.....	10,000.00
When 8/10 of the work is performed.....	10,000.00
When completed.....	10,000.00
30 days after delivery.....	7,750.00

\$97,750.00

142 3. That in conformity with the terms of said agreement, your petitioner has paid to the said, the William R. Trigg Company, three installments of ten thousand (10,000) dollars each for each of said steam tug boats, aggregating the sum of sixty thousand (60,000) dollars.

4. That the said two steam tugs are in an incomplete condition and yet unfinished, and owing to the institution of this suit and the fact that the receiver appointed herein has taken possession of the works and property of the said, the William R. Trigg Company, work on said steam tug boats has ceased, and in fact no work is now being done at the ship yards of the said company.

5. That your petitioner suffers great inconvenience, embarrassment and loss by reason of cessation of work upon the two steam tugs, and

the fact that the same will not be completed in the time provided for by said agreement.

6. That by virtue of the terms, provisions and covenants in said written contract contained, and the legal effect thereof, as your petitioner is advised, the title to the said steam tug boats, so far as the work on the same, and materials used therein, has progressed, became absolutely vested in your petitioner when and as the partial payments provided by said contract were made by your petitioner to the said, the William R. Trigg Company; and that by the partial payments so as aforesaid made by your petitioner, it has paid for all of the work done upon, and materials used in the construction of, said steam tugs.

7. That the title to the said two steam tug boats having, as aforesaid, vested in your petitioner, that the same is not subject to the claims, liens or demands of material men or those performing labor upon said tugs under the statute of Virginia, or to the payment of liens of any other persons having claims against the said, the William R. Trigg Company, and that the William R. Trigg Company is not such a manufacturing company as is contemplated and provided for in said statute.

Wherefore, the premises considered, your petitioner prays that an order may be entered in this cause directing the receiver herein to comply with and perform the terms and conditions of said contract, and by proper means forthwith to proceed with the construction of said two steam tug boats and to complete the same in accordance with the terms of said contract, and that your petitioner may
143 be made a party to this cause, and may have such other, further and general relief as the necessities of its case may require.

And your petitioner will ever pray.

THE PENNSYLVANIA RAILROAD COMPANY,
By CHAS. E. PUGH, *Vice-President*.

FRANCIS L. SMITH,
Solicitor for Petitioner.

STATE OF PENNSYLVANIA,
City of Philadelphia, to wit:

I, Hiram H. Potts, a notary public in and for the city aforesaid, in the State of Pennsylvania, do hereby certify that Chas. E. Pugh personally appeared before the undersigned in the city aforesaid, and made oath in due form of law that he believes the matters and facts set forth and contained in the foregoing petition to be true.

Given under my hand this twelfth day of February, 1903.

[SEAL.]

HIRAM H. POTTS,
Notary Public.

Commission expires February 26th, 1905.

EXHIBIT A.

NOTE.—Copy of articles of agreement is not copied here because it is attached to the demurrer and answer of the Pennsylvania Railroad Company in this record.

Petition of New York, Philadelphia and Norfolk Railroad Company, filed in court under decree of March 21, 1903.

In the Chancery Court of the City of Richmond.

S. H. HAWES AND COMPANY

v.

THE WILLIAM R. TRIGG COMPANY ET AL.

To the Honorable DANIEL GRINNAN, *Judge of said Court:*

The petition of the New York, Philadelphia and Norfolk Railroad Company respectfully represents unto your honor as follows:

1. That heretofore, to wit, on the 17th day of July, 1902, your petitioner entered into a contract with the William R. Trigg Company of Richmond, Virginia, for the construction of one steel tug boat 122 feet long, 24 feet beam, and 12 feet 7 inches depth, with one return tubular boiler 14 ft. 6 inches diameter, 13 ft. 0 inches long, and a compound engine 20" x 40" x 28" with auxiliaries, all equipment, furnishing, etc., work on the same to be commenced within ten (10) days from said date, and to be completed on or before the 17th day of March, 1903, according to the terms, specifications and conditions contained in a certain written contract, a true copy whereof is filed herewith, marked "Exhibit A." and prayed to be read and taken as a part of this petition.

2. That your petitioner, by the terms of said contract, was to pay to the said William R. Trigg for the work to be done and the materials furnished, under the said contract, as follows:

When one-fifth of the work has been performed.....	\$12,000.00
When two-fifths of the work has been performed.....	12,000.00
When three-fifths of the work has been performed.....	12,000.00
When four-fifths of the work has been performed.....	12,000.00
When completed and delivered at Norfolk, Va.....	12,000.00
Thirty days after delivery.....	8,250.00

Total contract price..... 68,250.00

3. That in conformity with the terms of said agreement your petitioner has paid to the said The William R. Trigg Company one installment of twelve thousand (12,000) dollars for said steel tugboat.

4. That the said steel tugboat is in an incomplete condition and yet unfinished, and owing to the institution of this suit and the fact that the receiver appointed herein has taken possession of the works and property of the said The William R. Trigg Company, work on said steel tugboat has ceased, and in fact no work is now being done at the ship yards of the said company.

5. That your petitioner suffers great inconvenience, embarrassment and loss by reason of cessation of work upon the steel tugboat, and the fact that the same will not be completed in the time provided for by said agreement.

145 6. That by virtue of the terms, provisions, and covenants in the said written contract contained, and the legal effect thereof, as your petitioner is advised, the title to the said steam tugboat, so far as the work on the same, and materials used therein, has progressed, became absolutely vested in your petitioner when and as the partial payments provided by said contract were made by your petitioner to the said The William R. Trigg Company, and that by the partial payments so as aforesaid made by your petitioner it has paid for all of the work done upon, and materials used in the construction of, said steam tug.

7. That the title to the said steel tugboat having as aforesaid vested in your petitioner, that the same is not subject to the claims, liens or demands of material men or those performing labor upon said tugboat under the statute of Virginia, or to the payment of liens of any other persons having claims against the said The William R. Trigg Company, and that The William R. Trigg Company is not such a manufacturing company as is contemplated and provided for in said statute.

Wherefore, the premises considered, your petitioner prays that an order may be entered in this cause directing the receiver herein to comply with and perform the terms and conditions of said contract, and by proper means forthwith to proceed with the construction of said steel tugboat and to complete the same in accordance with the terms of said contract, and that your petitioner may be made a party to this cause, and may have such other, further, and general relief as to equity may seem meet and the necessities of its case may require. And your petitioner will ever pray.

THE NEW YORK, PHILADELPHIA AND

NORFOLK RAILROAD COMPANY,

By W. A. PATTON, *President.*

FRANCIS L. SMITH,

Solicitor for Petitioner.

STATE OF PENNSYLVANIA,

City of Philadelphia, to wit:

I, Hiram H. Potts, a notary public in and for the city aforesaid, in the State of Pennsylvania, do hereby certify that W. A. Patton
146 personally appeared before the undersigned in the city aforesaid and made oath in due form of law that he believes the matters and facts set forth and contained in the foregoing petition to be true.

Given under my hand this twelfth day of February, 1903.

HIRAM H. POTTS, [SEAL.]

Notary Public.

Commission expires February 26th, 1905.

(Copy.)

EXHIBIT A.

Articles of agreement made and concluded this seventeenth day of July, A. D. 1902, by and between The New York, Philadelphia & Norfolk Railroad Company, by W. A. Patton, president, whose authority, for the purposes of these presents, is hereby admitted, of the first part, and The William R. Trigg Company of Richmond, Va., per Lilburn T. Myers, vice-president, of the second part,

Witnesseth, That for and in consideration of the covenants and payments hereinafter mentioned to be made and performed by the said party of the first part, the said party of the second part doth hereby covenant and agree to furnish all the labor and materials for, and perform the work necessary to complete in the most substantial and workmanlike manner, to the satisfaction and acceptance of the superintendent of motive power of the said party of the first part,

One steel tugboat 122 feet long, 24 feet beam and 12 feet 7 inches depth, with one return tubular boiler 14 ft. 6 inches diameter, 13 ft. 0 inches long and a compound engine 20'' x 40'' x 28'' with auxiliaries, all equipment, furnishings, etc., the said work to be commenced within ten days from this date, and to be finished as described in the approved plans and specifications hereto attached, and agreeably to the directions received from the said superintendent of motive power on or before the seventeenth day of March, 1903.

And it is further agreed that the entire work is to be constructed and finished in every part in good, substantial and workmanlike manner, according to the accompanying drawings and specifications; to the full extent and meaning of the same, and to the entire satisfaction, approval, and acceptance of the superintendent of motive power of the said party of the first part; and under the supervision and direction of such agent or agents as he may appoint.

147 Additional detail and working drawings will be furnished by the party of the second part, in exemplification of the attached plans and specifications, from time to time as may be required; and it is to be distinctly understood, that all such additional drawings are to be considered as virtually embraced within and forming part of these specifications. Figured dimensions shall in all cases be taken in preference to scale measurements.

The said superintendent of motive power shall have the right to make any alterations, additions, or omissions of work or materials herein specified, or shown on the drawings, during the progress of the structure, that he may find to be necessary; and the same shall be acceded to by the said party of the second part, and carried into effect, without in any way violating or vitiating this contract.

If any additions, alterations, or omissions are made in the structure during the progress of the work, the value of such shall be decided by the said superintendent of motive power, in pursuance of the fore-

going provision, who shall make an equitable allowance for the same, and shall add the amount of said allowance to the contract price of the work, if the cost has been increased; or shall deduct the amount, if the cost has been lessened, as he, the said superintendent of motive power, may deem just and equitable. The said party of the first part will pay for no extra work or materials, unless ordered in writing by them through their superintendent of motive power.

Any disagreement or difference between the parties to this contract, upon any matter or thing arising from these specifications, or the drawings to which they refer, or the contract for the work, or the kind or quality of the work required thereby, shall be decided by the said superintendent of motive power of the party of the first part, whose decision and interpretation of the same shall be considered final, conclusive, and binding upon both parties.

All materials and labor used throughout must be the best of their several kinds, and subject to the approval of the superintendent of motive power.

The said superintendent of motive power shall have full power at any time during the progress of the work to reject any material that he may deem unsuitable for the purpose for which it was
148 intended, or which is not in strict conformity with the spirit of these specifications. He shall also have the power to cause any inferior or unsafe work to be taken down and altered, at the cost of the said party of the second part.

Particular care must be taken of all the finished work, which work must be thoroughly protected from injury or defacement, during the erection and completion of the structure.

The said party of the first part will not transport free any of the workmen or materials for this work, and all material, including tools, must be shipped in the name of the party of the second part, and in no case shall it be shipped in care of or in the name of the railroad company or any of its officers or employees, and said party of the second part must pay the regular freight rates thereon.

It is further covenanted and agreed between the said parties, that the said party of the second part shall not sublet or transfer this contract, or any part thereof, to any person (excepting for the delivery of materials), without the written consent of the superintendent of motive power, but will at all times give personal attention and superintendence to the work.

And the said party of the first part doth promise and agree to pay to the said party of the second part for the work to be done and materials furnished under this contract, as follows, to wit:

When one-fifth of the work has been performed	\$12,000.00
When two-fifths of the work has been performed	12,000.00
When three-fifths of the work has been performed	12,000.00
When four-fifths of the work has been performed	12,000.00
When completed and delivered at Norfolk, Va	12,000.00
Thirty days after delivery	8,250.00
Total contract price	68,250.00

And when all the work embraced in this contract is completed, agreeably to the specifications, and in accordance with the directions and to the satisfaction and acceptance of the said superintendent of motive power, the party of the second part shall also furnish to said party of the first part releases, under seal, from all the mechanics and material men, of all liens, claims, and demands for materials furnished and provided, and work and labor done and performed
 149 upon or about the work herein contracted for, or otherwise arising under this contract.

And the said party of the second part doth further covenant and agree to take, use, provide, and make all proper, necessary, and sufficient precautions, safeguards, and protections against the occurrence or happening of any accidents, injuries, damages, or hurt to any person or property during the progress of the construction of the work herein contracted for, and to be responsible for, and to indemnify and save harmless the said parties of the first part, and the said superintendent of motive power from the payment of all sums of money by reason of all or any such accidents, injuries, damages, or hurt that may happen or occur upon or about said work, and from all fines, penalties, and loss incurred for or by reason of the violation of any city or borough ordinance or regulation, or law of the State, or United States, while the said work is in progress of construction.

And it is mutually agreed and distinctly understood that the decision of the superintendent of motive power shall be final and conclusive in any dispute which may arise between the parties to this agreement, relative to or touching the same, and each and every of said parties does hereby waive any right of action, suit, or suits, or other remedy in law or otherwise, by virtue of said covenants, so that the decision of said superintendent of motive power shall, in the nature of an award, be final and conclusive on the rights and claims of said parties.

The party of the second part agrees to insure the structure against loss or damage by fire, water, or accident in favor of the party of the first part to an amount equal to that advanced, and to deliver the structure to the party of the first part at Norfolk, Va., on or before the date above specified.

And it is agreed that the payments shall be delayed five days for each working day delivery of the boat is delayed beyond the time specified.

To make a satisfactory trial of the boat, engines, boilers, and appurtenances and to make good any defects that may develop in the working of same for a period of three months after delivery, consequential damages excepted, provided usual diligence has been observed by the party of the first part.

To arrange to pass inspection by the U. S. Government inspectors of the port of Norfolk, Va.

150 In witness whereof, The parties herein named have hereunto set their hands the day and year herein first above named.

THE N. Y. P. & N. RAILROAD COMPANY,
By W. A. PATTON, *President*.
WILLIAM R. TRIGG COMPANY,
By LILBURN T. MYERS, *Vice-President*.

Witness:

J. N. PURVIANCE,
M. J. KELLOGG.

Demurrer and answer of the Standard Oil Company, filed in court under decree of July 28, 1903.

S. H. HAWES AND COMPANY, WHO SUE, &C.,
v.
WILLIAM R. TRIGG COMPANY ET ALS. }

The demurrer and answer of the Standard Oil Company, of New York, which has been made a party defendant to this cause, by order of court, to a bill of complaint exhibited against the William R. Trigg Company et als. in the Chancery Court of the city of Richmond by S. H. Hawes and Company, who sue, &c.

DEMURRER.

The said defendant, the Standard Oil Company, of New York, demurs to said bill of complaint and says that the same is not sufficient in law.

ANSWER.

And the said defendant, the Standard Oil Company, of New York, saving and reserving to itself the right to all manner of exceptions to said bill of complaint for its manifold imperfections, and without waiving its said demurrer, but insisting on the same for answer to said bill of complaint, or to so much thereof as it is advised it is material it should answer, answers and says:

That respondent has no knowledge whether the account for 151 which the plaintiffs claim a supply lien under sections 2485 and 2486 of the code of Virginia as at present amended is true, correct, and justly due by the William R. Trigg Company, as is alleged in said bill of complaint; but whether the said account be true and just, as therein alleged, or not, respondent says that the supply lien claimed therefor is null, void, and of no effect upon the grounds set forth in the answer of respondent to the petition of C. C. Knight and Company, which grounds respondent prays may be treated as if herein set forth at length, and as if pleaded to the supply lien claimed by said plaintiffs.

Respondent, further answering, says that it believes it to be true, as alleged in said bill of complaint, that the William R. Trigg Company is insolvent and that the appointment of a receiver was necessary, and that the other allegations of said bill are true, except that respondent would not be understood to admit that the first and second mortgages of the William R. Trigg Company have been executed, acknowledged, and recorded, or that the purport thereof and of the bonds secured thereby is correctly stated in said bill of complaint, respondent being advised that the mortgages and bonds themselves are the best evidence of all these facts.

Respondent, further answering, says, that it is the owner of an oil tank steamship which the William R. Trigg Company is under contract to build for respondent, and which stands in the yards of said company in an unfinished condition, and also of the material in said yards intended for said steamship and assigned to it, and is, moreover, the owner of one Dean Brothers steam pump, two National Transit cargo pumps, and one towing machine of the American Ship Windlass Company make, which pumps and towing machine were purchased and paid for by respondent and were stored at the ship yards of the said William R. Trigg Company for the use of respondent. The title of respondent to said steamship and material assigned to it and to said pumps and towing machine has been fully set forth in the answer and cross-bill of respondent filed to the petition of C. C. Knight and Company in this cause, which answer respondent prays to be taken and treated as a part of this, its answer, to said bill of complaint as if the same were herein incorporated.

And respondent having fully answered said bill of complaint prays not to be hence dismissed with its reasonable cost in this behalf expended.

And respondent will every pray, etc.

STANDARD OIL CO. OF NEW YORK,
By COKE & PICKRELL,
Its Counsel.

Demurrer and answer of Pennsylvania Railroad Company, filed in the clerk's office under date of May 4th, 1903.

S. H. HAWES & COMPANY

v.

In Chancery.

WILLIAM R. TRIGG COMPANY AND OTHERS.

The demurrer and answer of the Pennsylvania Railroad Company to the bill of complaint in this cause:

The defendant says that the bill of complaint is not sufficient in law and for cause of demurrer assigns:

That the William R. Trigg Company is not such a manufacturing company as is contemplated and intended by the laws of the State of Virginia, and the provisions of section 2485 of the code of Virginia and the several acts of assembly amendatory thereof do not apply to or include said company.

And without waiving said demurrer but adhering thereto, this defendant for answer to said bill of complaint or to so much thereof as it is advised it is material for it to answer unto, answering says:

First. The defendant admits that the William R. Trigg Company is a corporation created under the laws of Virginia, and at the time of the institution of this cause was engaged in the construction and building of boats, ships, vessels, and engines. Defendant is not informed as to whether or not said company was engaged in manufacturing tools and other manufactures in iron, steel and other metals, defendant denies that the said William R. Trigg Company is such a manufacturing company as is contemplated and intended by the laws of the State of Virginia, or that the provisions of section 2485 of the code of Virginia and the several acts of assembly amendatory thereof are applicable to it, and does not admit that the articles
153 of property alleged in the bill of complaint to have been sold and delivered by complainant to said company were supplies necessary to the operation of the said The William R. Trigg Company.

Second. And further answering this defendant says that it has no knowledge or information save the statements contained in the bill of complaint as to the sale and delivery of the articles therein mentioned by complainants to the said company, or the dates, terms, and conditions upon which said alleged sales were made, or what steps, if any, were taken by complainant to preserve and perfect the lien they claim against the property of the William R. Trigg Co. Neither admitting or denying the allegations of the bill of complaint respecting these matters, this defendant demands and calls for strict proof thereof.

Third. And further answering this defendant denies that complainants are lien creditors under the statute of the said William R. Trigg Company to the amount of \$2,048.68, or for any other amount, or that they have or are entitled to a prior lien upon the personal property of said company other than that forming a part of its plant, or a lien upon all of the estate (real and personal) of said company, for any amount whatever. And that even if such lien exists it will be confined to the personal property and estate actually belonging to the said William R. Trigg Company, the title to which is vested in it, and will not be extended so as to embrace and include personal property and estate belonging to others, but which was in the possession of said company at the time said alleged lien was claimed.

Fourth. This defendant admits that the said William R. Trigg is insolvent, and that its assets will be conserved by administration through this court.

Fifth. This defendant has no knowledge or information, except the statements contained in the bill of complaint, regarding the execution of the first and second mortgages by the said William R. Trigg Company, but believes said statements to be substantially correct, as well as the payment of interest on the bonds secured by

the first mortgage and default in the payment of interest on bonds secured by the second mortgage.

Sixth. This defendant admits that the William R. Trigg Company is largely indebted to a number of banks and individuals, and
154 was at the time of the institution of this cause likewise indebted to a number of its employees and others, which debts the said company owing to its failing and insolvent condition it was unable to pay, and that it was necessary to appoint a receiver to take charge of the assets of said company, in order that they may be administered under the direction of the court in this cause.

Seventh. This defendant admits "that the said William R. Trigg Company has on hand a large number of uncompleted contracts, towards the completion of some of which such progress has been made that it will be of advantage to the said company and its creditors that a receiver shall be empowered to complete them; and this can only be accomplished by a receiver appointed by a court of competent jurisdiction."

And further answering this defendant alleges and so avers the fact to be that amongst the uncompleted contracts referred to in said bill of complaint is one for the construction of two tug boats for this defendant by said William R. Trigg Company under the following circumstances:

Eighth. That on the 30th day of June, 1902, it entered into a contract with the William R. Trigg Company, of Richmond, Virginia, for the construction of two steam tug boats of the "Lancaster" class at Richmond, Virginia, upon the terms and conditions set forth in the written agreement of that date, a true copy whereof is herewith filed marked Exhibit "A," and prayed to be read and taken as a part of this answer.

Ninth. That by the second clause of said contract your petitioner agreed to pay to the said The William R. Trigg Company for the work done and material furnished in conformity with this agreement upon and immediately after inspection and written certification of approval thereof by duly authorized inspector or inspectors of your petitioner's the sum of \$97,750.00 for the two boats (being \$48,875.00 per boat) in ten (10) partial payments as follows:

When 1/10 of the work is performed.....	\$10,000.00
When 2/10 of the work is performed.....	10,000.00
When 3/10 of the work is performed.....	10,000.00
When 4/10 of the work is performed.....	10,000.00
When 5/10 of the work is performed.....	10,000.00
When 6/10 of the work is performed.....	10,000.00
When 7/10 of the work is performed.....	10,000.00
When 8/10 of the work is performed.....	10,000.00
155 When completed.....	10,000.00
30 days after delivery.....	7,750.00
	<hr/> \$97,750.00

Tenth. That in conformity with the terms of said agreement your petitioner has paid to the said The William R. Trigg Company

three installments of ten thousand (10,000) dollars each for each of said steam tugboats, aggregating the sum of sixty thousand (60,000) dollars.

Eleventh. That the said two steam tugs are in an incomplete condition and yet unfinished, and owing to the institution of this suit and the fact that the receiver appointed herein has taken possession of the works and property of the said The William R. Trigg Company, work on said steam tugboats has ceased, and in fact no work is now being done at the ship yards of the said company.

Twelfth. That your petitioner suffers great inconvenience, embarrassment, and loss by reason of cessation of work upon the two steam tugs, and the fact that the same will not be completed in the time provided for by said agreement.

Thirteenth. That under the terms, provisions, and covenants in the said written contract contained, the title to the said steam tugboats so far as the work on the same and materials therein contained had progressed, became absolutely vested in your petitioner when and as the partial payments provided by said contract were made by your petitioner to the said The William R. Trigg Company, and that by the partial payments so as aforesaid made by your petitioner it has paid for all of the work done upon and materials put in said steam tugs.

Fourteenth. That the title to the said two steam tugboats having as aforesaid vested in your petitioner, that the same is not subject to the claims, liens, or demands of material men, or those performing labor upon said tugs under the statute of Virginia, or to the payment of liens of any other persons having claims against the said The William R. Trigg Company, and that the William R. Trigg Company is not such a manufacturing company as is contemplated and provided for in said statute.

Wherefore the premises considered, this defendant prays that an order may be entered in this cause recognizing the title and right of property to the two said tugboats to be in this defendant,
 156 directing the receiver herein to comply with and perform the terms and conditions of said contract between this defendant and the William R. Trigg Company and by proper means forthwith to proceed with the construction of said two steam tugboats and to complete the same in accordance with the terms of said contract; and that so far as the same may be necessary to preserve, protect, and enforce the rights of this defendant in the premises that this answer may be treated as a cross bill. And that this defendant may have such other, further, and general relief as to equity may seem meet and the necessities of its case may require, and it will ever pray, etc.

THE PENNSYLVANIA RAILROAD CO.
 By CHAS. E. PUGH, *Vice-President*.

FRANCIS L. SMITH,
Solicitor for Defendant.

State of Pennsylvania,

City of Philadelphia, to wit:

I, Hiram H. Potts, a notary public in and for the city aforesaid, in the State of Pennsylvania, do hereby certify that Chas. E. Pugh personally appeared before the undersigned in the city aforesaid, and made oath in due form of law that he believes the matters and facts set forth and contained in the foregoing answer to be true.

Given under my hand this first day of May, 1903.

[SEAL.]

HIRAM H. POTTS,
Notary Public.

[SEAL.]

Commission expires February 26th, 1905.

This agreement, made this thirtieth day of June, A. D. 1902, between the William R. Trigg Company, of Richmond, Virginia, party of the first part, and the Pennsylvania Railroad Company, party of the second part:

Witnesseth, That in consideration of one dollar paid by each party to the other before the execution and delivery hereof, the receipt whereof is hereby acknowledged, and also of the covenants hereinafter contained on the part of each party to be observed, kept, and performed.

It is covenanted, agreed, stipulated, and understood, by and between the said parties hereto as follows, viz:

157 First. The party of the first part shall and will furnish all necessary suitable material for, and will build and finish, complete, in conformity with general arrangements, drawings, and detail specifications approved and furnished by the party of the second part, two steam tug boats of the "Lancaster" class at Richmond, Virginia, for the party of the second part. Said drawings and specifications having been submitted to and carefully examined by the party of the first part or their duly authorized representative are hereby agreed to be and are made part of this agreement as fully as if attached hereto. Said tug boats to be delivered complete to the party of the second part at Jersey City, N. J., such delivery to be made within six months from the date of this agreement, provided, however, that if delivery be unavoidably but not unduly delayed by reason of fires or strikes at the works of the party of the first part, or causes that in the opinion of the party of the second part are beyond the control of the party of the first part, such delays shall be regarded as excusable, and the party of the first part shall not be in any wise responsible to the party of the second part therefor.

Second. The party of the second part shall and will pay to the party of the first part for the work done and material furnished in conformity with this agreement upon and immediately after inspection and written certification of approval thereof by a duly authorized inspector or inspectors of the party of the second part the sum of ninety-seven thousand seven hundred and fifty dollars (\$97,750) for

the two boats (being \$48,875 per boat), in ten partial payments, as follows:

When 1/10 of the work is performed.....	\$10,000.00
When 2/10 of the work is performed.....	10,000.00
When 3/10 of the work is performed.....	10,000.00
When 4/10 of the work is performed.....	10,000.00
When 5/10 of the work is performed.....	10,000.00
When 6/10 of the work is performed.....	10,000.00
When 7/10 of the work is performed.....	10,000.00
When 8/10 of the work is performed.....	10,000.00
When completed.....	10,000.00
30 days after delivery.....	7,750.00
	\$97,750.00

158 but in case of delay (except for causes hereinafter specified) on the part of the party of the first part either in the beginning, continuing, or completing delivery of said tug boats as herein stipulated, the payments for the boats so delayed in delivery shall not be payable immediately after inspection and approval, but payment therefor shall be deferred to and become due at a date as many days after inspection and approval as shall have elapsed between the date when each boat should have been delivered and the date of its actual delivery.

Third. It is understood, stipulated, and agreed that the party of the second part, by its duly authorized representative or representatives, shall have access to the works of the party of the first part, or the works of the parties who are furnishing material for said tug boats at any and all reasonable times during the construction of said boats with full right and privilege to inspect the workmanship and all material used in the construction of each and all of said boats, and with full right to condemn and reject if found inadequate or defective.

Fourth. It is also understood, stipulated, and agreed that all finished and unfinished material entering into the construction of said tug boats shall be transported to or towards the place of construction as far as possible over the lines of railroad operated or controlled by the party of the second part.

Fifth. It is also understood, stipulated, and agreed that the party of the second part shall have the right to make any alterations, additions or omissions of work or materials herein specified, or shown in drawings, during the progress of this work that the said party of the second part may find necessary; and it is further understood, stipulated, and agreed that in case any change or modification is made in said drawings or specifications, or in case of substitution of other material for that called for by the drawings and specifications, or the use of material that does not in all respects meet the requirements of the specifications decreasing or increasing the cost of said tug boats, or any of them, the party of the first part will make proper reduction from the above-mentioned price of forty-eight thousand eight hundred and seventy-five dollars (\$48,875) per boat for any of such de-

crease, and the party of the second part will pay a proper advance on said price for any such increase, the amount of such decrease or increase to be determined by agreement between the parties hereto at the time such change, modification or substitution is authorized.

159 Sixth. It is also understood, stipulated, and agreed that additional detail and working drawings will be furnished by the party of the first part, in exemplification of the attached plans and specifications, from time to time, as may be required, and it is to be distinctly understood that all such additional drawings are to be approved by the general superintendent motive power, or his authorized representative, as representing the party of the second part, and are to be considered as virtually embraced within and forming part of this contract, such drawings to become the property of the party of the second part. It is also understood that the approval of these drawings does not relieve the party of the first part from errors in design.

Seventh. It is further understood, stipulated, and agreed that the drawings and specifications are intended to explain each other, and anything shown on the drawings but not referred to in the specifications, or referred to in the specifications but not shown on the drawings, shall be deemed and considered effective as fully as if the same was shown and referred to in both drawings and specifications. In the case of any alleged discrepancy between the drawings and the specifications, the same shall be referred to the general superintendent of motive power of the said party of the second part for determination and adjustment, and his decision thereon shall be final and conclusive.

Eighth. It is also understood, stipulated, and agreed that when all the work embraced in this contract is completed, agreeably to the specifications, and in accordance with the directions and to the satisfaction and acceptance of the said party of the second part, the party of the first part shall also furnish to the party of the second part, releases, under seal, from all the mechanics and material men, all liens, claims, and demands for materials furnished and provided, and work and labor done and performed upon or about the work herein contracted for, or otherwise arising under this contract.

Ninth. It is further covenanted and agreed between the said parties, that the said party of the first part shall not sublet or transfer this contract, or any part thereof (excepting for the delivery of materials), without the written consent of the party of the second part, but will at all times give personal attention and superintendence to the work under them, or such work as they may be permitted to sublet.

160 Tenth. And the said party of the first part doth further covenant and agree to take, use, provide, and make all proper, necessary, and sufficient precautions, safeguards, and protections against the occurrence or happening of any accidents,

injuries, damages, or hurt to any person or property during the progress of the construction of the work herein contracted for, and to be responsible for, and to indemnify and save harmless the said party of the second part, from the payment of all sums of money by reason of all or any such accidents, injuries, damages or hurt that may happen or occur upon or about said work, and from all fines, penalties, and loss incurred for or by reason of the violation of any city or borough ordinance or regulation, or the law of the State, or United States, while the said work is in progress of construction.

Eleventh. The party of the first part agrees to insure the structure against loss or damage by fire, water or accident in favor of the party of the second part to an amount equal to that advanced by the party of the second part in partial payments of this contract.

Twelfth. In case of any difference arising out of any matters contained in this agreement, the same shall be submitted to arbitration. Within thirty days after notice shall have been given by either of the parties hereto to the other there shall be chosen one arbitrator by the party of the first part and one by the party of the second part, and these two shall select a third disinterested and competent party. The three arbitrators so chosen shall examine into the cause of difference, and the decision of the majority of them shall be final and binding between the parties hereto upon the matter in question. In case either of the parties hereto shall fail to appoint a referee within thirty days aforesaid, then and in that event the referee appointed by the party not in fault shall appoint a referee for the defaulting party and the two referees so appointed shall select a third and the three so chosen shall decide such difference, their decision or that of the majority of them to be final and conclusive between the parties hereto.

Thirteenth. The party of the first part agrees to test and make a satisfactory trial of all parts of the said tug boats, boilers, engines, and appurtenances; to make good any defects that may develop in the workmanship or quality of material for a period of three months after delivery, unless otherwise specified, provided the design is not at fault, and the defects are not caused by the action of the employees of

the party of the second part. The party of the first part also
161 agree to arrange to have the said tug boats pass inspection by the United States inspectors at the port of New York.

In witness whereof, the parties hereto have caused this agreement to be duly executed the day and year first above written.

THE PENNSYLVANIA RAILROAD COMPANY.

By -----

Purchasing Agent.

Witnesses.

Demurrer and answer of the New York, Philadelphia & Norfolk Railroad Co., filed in clerk's office at 2nd May Rules, 1903.

S. H. HAWES & COMPANY

v.

WILLIAM R. TRIGG COMPANY AND OTHERS.

} In Chancery.

The demurrer and answer of the New York, Philadelphia and Norfolk Railroad Company to the bill of complaint in this cause.

The defendant says that the bill of complaint is not sufficient in law and for cause of demurrer assigns—

That the William R. Trigg Company is not such a manufacturing company as is contemplated and intended by the laws of the State of Virginia, and the provisions of section 2485 of the Code of Virginia and the several acts of assembly amendatory thereof do not apply to or include said company.

And without waiving said demurrer but adhering thereto, this defendant for answer to said bill of complaint or to so much thereof as it is advised it is material for it to answer unto, answering says:

First. The defendant admits that the William R. Trigg Company is a corporation created under the laws of Virginia and at the time of the institution of this cause was engaged in the construction and building of boats, ships, vessels, and engines. Defendant is not informed as to whether or not said company was engaged in manufacturing tools and other manufactures in iron, steel or other metals. Defendant denies that the said William R. Trigg Company is such a manufacturing company as is contemplated and intended by the laws of the State of Virginia, or that the provisions of section 2485 of the Code of Virginia and the several acts of assembly amendatory thereof are applicable to it, and does not admit that the articles of property alleged in the bill of complaint to have been sold and delivered by complainant to said company were supplies necessary to the operation of the said The William R. Trigg Company.

Second. And further answering this defendant says that it has no knowledge or information save the statements contained in the bill of complaint as to the sale and delivery of the articles therein mentioned by complainants to the said company, or the dates, terms and conditions upon which said alleged sales were made, or what steps if any were taken by complainant to preserve and perfect the lien they claim against the property of the William R. Trigg Company. Neither admitting or denying the allegations of the bill of complaint respecting these matters this defendant demands and calls for strict proof thereof.

Third. And further answering this defendant denies that complainants are lien creditors under the statute of the said William R. Trigg Company to the amount of \$2,048.68, or for any other amount, or that they have or are entitled to a prior lien upon the personal

property of said company other than that forming a part of its plant, or a lien upon all the estate (real and personal) of said company, for any amount whatever. And that even if such lien exists it will be confined to the personal property and estate actually belonging to the said William R. Trigg Company, the title to which is vested in it, and will not be extended so as to embrace and include personal property and estate belonging to others, but which was in the possession of said company at the time said alleged lien was claimed.

Fourth. This defendant admits that the said William R. Trigg is insolvent, and that its assets will be conserved by administration through this court.

Fifth. This defendant has no knowledge or information except the statements contained in the bill of complaint, regarding the execution of the first and second mortgages by the said William R. Trigg Company, but believes said statements to be substantially correct, as well as the payment of interest on the bonds secured by the first mortgage, and default in the payment of interest on bonds secured by the second mortgage.

Sixth. This defendant admits that the William R. Trigg Company is largely indebted to a number of banks and individuals, and was at the time of the institution of this cause likewise indebted to a number of its employees and others, which debts the said company, owing to its failing and insolvent condition, it was unable to pay, and that it was necessary to appoint a receiver to take charge of the assets of said company, in order that they may be administered under the direction of the court in this cause.

Seventh. This defendant admits "that the said William R. Trigg Company has on hand a large number of uncompleted contracts, towards the completion of some of which such progress has been made that it will be of advantage to the said company and its creditors that a receiver shall be empowered to complete them; and this can only be accomplished by a receiver appointed by a court of competent jurisdiction."

And further answering this defendant alleges and so avers the fact to be that, amongst the uncompleted contracts referred to in said bill of complaint is one for the construction of one tug boat for this defendant by said William R. Trigg Company, under the following circumstances:

Eighth. That heretofore, to-wit, on the 17th day of July, 1902, your petitioner entered into a contract with The William R. Trigg Company of Richmond, Virginia, for the construction of one steel tug boat 122 feet long, 24 feet beam and 12 feet, 7 inches depth, with one return tubular boiler 14 feet, 6 inches diameter, 13 feet, 0 inches long and a compound engine 20'' x 40'' x 28'' with auxiliaries, all equipment, furnishings, etc., work on the same to be commenced within ten (10) days from said date, and to be completed on or before the 17th day of March, 1903, according to the terms, specifications, and conditions contained in a certain written contract, a true

copy whereof is herewith filed marked "Exhibit A," and prayed to be read and taken as a part of this answer.

Ninth. That your petitioner, by the terms of said contract, was to pay to the said William R. Trigg for the work to be done and the materials furnished, under the said contract, as follows:

164	When one-fifth of the work has been performed.....	\$12,000.00
	When two-fifths of the work has been performed.....	12,000.00
	When three-fifths of the work has been performed.....	12,000.00
	When four-fifths of the work has been performed.....	12,000.00
	When completed and delivered at Norfolk, Va.....	12,000.00
	Thirty days after delivery.....	8,250.00
	Total contract price.....	\$68,250.00

Tenth. That in conformity with the terms of said agreement your petitioner has paid to the said The William R. Trigg Company one installment of twelve thousand (\$12,000) dollars for said steel tugboat.

Eleventh. That the said steel tugboat is in an incomplete condition and yet unfinished, and owing to the institution of this suit and the fact that the receiver appointed herein has taken possession of the works and property of the said The William R. Trigg Company, work on said steel tugboat has ceased, and in fact no work is now being done at the shipyard of the said company.

Twelfth. That your petitioner suffers great inconvenience, embarrassment and loss by reason of cessation of work upon the steel tugboat, and the fact that the same will not be completed in the time provided for by said agreement.

Thirteenth. That under the terms, provisions and covenants in the said written contract contained, the title to the said steel tugboat so far as the work on the same and materials therein contained had progressed became absolutely vested in your petitioner when and as the partial payment provided by said contract were made by your petitioner to the said The William R. Trigg Company, and that by the partial payment so as aforesaid made by your petitioner it has paid for all of the work done upon any materials put in said steel tugboat.

Fourteenth. That the title to the said steel tugboat having as aforesaid vested in your petitioner, that the same is not subject to the claims, liens or demands of material men or those performing labor upon said tugboat under the statute of Virginia, or to the payment of liens of any other persons having claims against the said The William R. Trigg Company, and that The William R. Trigg Company is not such a manufacturing company as is contemplated and provided for in said statute.

165 Wherefore, the premises considered, this defendant prays that an order be entered in this cause recognizing the title and right of property to the one said tugboat to be in this defendant, directing the receiver herein to comply with and perform the terms and conditions of said contract between this defendant and the William R. Trigg Company and by proper means forthwith to pro-

ceed with the construction of said one steel tugboat and to complete the same in accordance with the terms of said contract; and that so far as the same may be necessary to preserve, protect, and enforce the rights of this defendant in the premises that this answer may be treated as a cross-bill. And that this defendant may have such other, further, and general relief as to equity may seem meet and the necessities of its case may require, and it will ever pray, etc.

THE NEW YORK, PHILADELPHIA AND NORFOLK RAILROAD
COMPANY,

By W. A. PATTON, *President.*

-----,
Solicitor for Defendant.

STATE OF PENNSYLVANIA, CITY OF PHILADELPHIA, TO-WIT:

I, Albert J. County, a notary public in and for the city aforesaid, in the State of Pennsylvania, do hereby certify that W. A. Patton personally appeared before the undersigned in the city aforesaid, and made oath in due form of law that he believes the matters and facts set forth and contained in the foregoing answer to be true.

Given under my hand this 6th day of May, 1903.

ALBERT J. COUNTY,

A. J. COUNTY,

Notary Public.

[SEAL]

Commission expires 21 January, 1905.

EXHIBIT "A."

NOTE.—Copy of articles of agreement is not copied here because it is attached to the petition of the N. Y., P. & N. R. R. Co. in this record.

166 *Demurrer and answer of the Standard Oil Company of New York, filed in Court under Decree of July 28, 1903.*

S. H. HAWES & COMPANY, WHO SUE, &C., }

v.

WILLIAM R. TRIGG COMPANY ET ALS. }

The demurrer and answer of the Standard Oil Company, of New York, to the petition of C. C. Knight & Company, who sue, &c., filed in the above-entitled cause against respondent and others.

DEMURRER.

Said defendant, the Standard Oil Company, of New York, demurs to said petition and says that the same is not sufficient in law.

ANSWER.

And said defendant, the Standard Oil Company, of New York, saving and reserving to itself the right to all manner of exception to

said petition for its manifold imperfections, and without waiving its said demurrer, but insisting on the same for answer to said petition, or to so much thereof as it is advised that it is material it should answer, answers and says:

That respondent has no knowledge whatever as to whether the account for which petitioners claim a supply lien under sections 2485 and 2486 of the code of Virginia as at present amended is true, correct, and justly due from the William R. Trigg Company or not; but whether said account to be true and correct or not, respondent says that said supply lien therefor is null, void, and of no effect for each of the following reasons:

1st. Because The William R. Trigg Company being a builder of ships is not a manufacturing corporation within the meaning of the sections of the code above mentioned as at present amended.

2nd. Because the commodities set down in said account filed 167 with the said claim of lien as having been furnished by petitioners to said William R. Trigg Company are not supplies necessary to the operation of a manufacturing plant within the meaning of the sections of the code above mentioned as at present amended.

3rd. Because said supply lien was not filed within the time required by said sections of the code as at present amended, and moreover in other particulars fails to comply with the requirements of said sections.

4th. Because said sections 2485 and 2486 as at present amended impose such liens only upon the property and assets of manufacturing and mining companies alone, and not upon the property and assets of natural persons or partnerships, although such natural persons or partnerships may be engaged in the manufacturing or mining business to the same extent and in the same manner as manufacturing or mining companies, and because said sections give such liens only to creditors furnishing supplies necessary to the operation of manufacturing or mining companies and not to creditors who furnish money or other valuable considerations to said companies, and thereby in both particulars discriminate against the William R. Trigg Company and respondent, and deny to them, and to each of them, the equal protection of the laws, and in so doing violate section one of the 14th amendment to the Constitution of the United States.

5th. Because petitioners, if entitled to a lien at all, are not entitled to a supply lien, but to a mechanic's lien only against the particular vessel into which petitioners' material went.

Respondent prays that each of the foregoing grounds may be considered as pleaded not only to the supply lien claimed by petitioners, but to the validity of each and every supply lien which has been or may hereafter be filed in this cause or before the commissioner, and that an opportunity be given respondent before a commissioner of this court to investigate each of said alleged supply liens and to make to them and to each of them all such legal and

equitable defences as to respondent may seem proper, whether hereinbefore set out or not.

And respondent further answering said petition says, that with the exception of the allegations relating to the oil tank steamship which the William R. Trigg Company is under contract to build for respondent, and which now stands in the
168 yards of said company in an unfinished condition, respondent knows nothing of the allegations of said petition.

And with respect to said steamship, respondent emphatically denies that the contract for the building of the same between respondent and the said William R. Trigg Company reserves, as alleged in said petition, to said William R. Trigg Company the title to said unfinished vessel, or to any of the parts thereof, or, as is also alleged in said petition, that the title thereto was, under said contract not to pass from said William R. Trigg Company to respondent until completed by said company and accepted by respondent, and that therefore, as alleged, said vessel in all its parts in their present unfinished condition is subject to the alleged supply liens of petitioners and others. On the contrary, respondent says that said steamship in all its parts in their present unfinished condition, and all the materials in the yards of said company intended for said vessel and assigned to it (an accurate list of which material is set forth in the inventory of the receiver filed in this cause, to which reference is here made) are the property of respondent and are therefore not subject to the claims of the creditors of the said William R. Trigg Company, whether supply lien creditors or not.

And thereupon respondent says, that on the 7th day of November, 1901, respondent entered into a certain contract in writing with the William R. Trigg Company whereby said company agreed by the 7th day of November, 1902 (the date named in said contract for the completion of the work), to build for respondent, according to the specifications attached to and made a part of said contract, at the ship yards of said company in the city of Richmond, an ocean-going tank steamship capable of carrying 1,500,000 gallons of petroleum in bulk, for the price of \$439,500.00, to be paid by respondent to the said William R. Trigg Company in certain specified installments at certain specified stages of completion of the work, after the same should be accepted and certified to by an inspector or surveyor of respondent to be stationed at the yards of the said William R. Trigg Company in charge of said work.

A copy of said contract and the specifications therein referred to has been attached to the petition filed by respondent in this cause on the 8th day of July, 1903, and the same is prayed to be read as a part of this answer as if incorporated herein.

That said steamship, which is now upon the stocks in the
169 ship yards of the said William R. Trigg Company, to be called the "Lucas," and the hull of which is designated by the officials of said company as "Hull No. 19," with its engines and other

appurtenances is about fifty-three per centum (53%) completed; and that respondent has already paid on account thereof to the said William R. Trigg Company the sum of \$219,750, in installments, as stipulated in said contract, each of said installments having been paid as said steamship reached the particular stage of completion at which the same became due and payable, according to the said contract, and after the inspector or surveyor of respondent in charge had accepted said work up to that point.

That by the terms of said contract, and according to the true meaning and intent thereof, said steamship, including its engines and other appurtenances, in its present unfinished condition, is the absolute property of respondent, as is also the material in the yards of said company intended for said steamship and assigned to it, and has heretofore in its various stages towards completion always been recognized to be the property of respondent by the said William R. Trigg Company, and is therefore subject to no labor or supply or other liens filed against the said William R. Trigg Company or its property.

That, although the said William R. Trigg Company agreed in its said contract to complete the said steamship on or before the 7th day of November, 1902, the said steamship was not half completed on that day, and said company is now nearly eight months in default under said contract in this particular, and that nothing whatever has been done towards the completion of said steamship, or of any part thereof, since the appointment of the receiver in this cause seven months ago to the great loss and inconvenience of said respondent, and to the great and continuing deterioration of said steamship of respondent as the same stands in its incomplete state in the yards of the said William R. Trigg Company; that the said William R. Trigg Company being thus in default, respondent has the right in that event, under an express provision of said contract, to take possession of said steamship in all its parts and complete it itself or have it completed by other persons at the cost of the William R. Trigg Company, and has heretofore filed its petition in this cause asserting its right so to do under this provision of said contract.

And respondent would further state that the receiver of the
170 court in this cause is also in the possession of the following property belonging to respondent stored in one of the store-rooms of the ship yards of the said William R. Trigg Company, namely: One Dean Brothers steam pump, two National Transit cargo pumps, and one towing machine of the American Ship Windlass Company make; that said pumps and towing machine were purchased and paid for by respondent and were stored at said ship yards of the William R. Trigg Company for the use of respondent, and are its absolute property, in which the said William R. Trigg Company has not now and never has had any interest whatever.

Respondent prays that this, its answer, may, if necessary, be treated as its cross-bill, and that petitioners and all other alleged supply lien or labor lien creditors, as well as the William R. Trigg Com-

pany, may be required to answer the same, but not under oath, an answer under oath being hereby expressly waived as to each of said parties; that said steamship in all its parts and the material assigned to it and the pumps and towing machine above mentioned be decreed to be the absolute property of respondent, free and clear from any and all liens whatever, and to be delivered to it by the receiver, and for general relief.

And respondent having fully answered said petition, now prays to be hence dismissed with its reasonable costs in this behalf expended.

And your respondent will ever pray, etc.

STANDARD OIL CO. OF NEW YORK,
By COKE & PICKRELL,

Its Counsel.

Demurer and answer of the New York, Philadelphia & Norfolk Railroad Company to petition of C. C. Knight & Company, filed in clerk's office at 2nd May Rules, 1903.

S. H. HAWES & COMPANY

v.

WILLIAM R. TRIGG COMPANY AND OTHERS.

} In Chancery.

The demurrer and answer of the New York, Philadelphia
171 and Norfolk Railroad Company to the petition of C. C. Knight
and Company filed in this cause.

This defendant says that said petition is not sufficient in law. And without waiving said demurrer, but adhering thereto, for answer to said petition or to so much thereof, as it is advised it is material for it to answer unto, answering saith:

First. This defendant does not admit that petitioners furnished supplies to the William R. Trigg Company at the dates and in the amounts stated in said petition; that said supplies were necessary to the operation of said company or that said petitioners claimed, filed and perfected a lien on the property of said company, in the manner prescribed by law, but calls for strict proof of all such matters and things. It does deny that the William R. Trigg Company is a manufacturing company under the statute law of the State, or that the statutes of the Commonwealth relative to manufacturing companies apply to or embrace the William R. Trigg Company. It admits the institution of this suit; that the same is now pending and the appointment of Lilburn T. Myers as receiver of the assets and property of the William R. Trigg Company. It denies that the petitioners are supply-lien creditors of said William R. Trigg Company.

Second. It denies that said petitioners are entitled to or have a prior lien for \$5,163.56 or for any other amount upon all the personal property of said company other than that forming a part of its plant, or a lien upon all the estate, both real and personal, of and to which

said company was possessed and entitled at the time the bill of complaint was filed in this cause and a receiver appointed herein.

Third. And further answering this defendant says that it has no information as to the statement of facts set forth and contained in the third paragraph of said petition, other than said statement itself.

Fourth. And further answering this defendant neither admits or denies the conclusions of law and allegations contained in the fourth paragraph of said petition.

Fifth. And further answering defendant says that it is not advised and has no information as to the statements of facts contained in the fifth paragraph of said petition. And that if said averments be established it submits all questions and conclusions of law arising therein to the determination of this honorable court.

172 Sixth. And further answering, this defendant denies all and so much of the sixth paragraph of said petition as avers and alleges that petitioners and all other supply-lien creditors of the William R. Trigg Company have a prior lien or a lien of any nature upon the vessels constructed and being constructed at its yards and docks by said company, for the various firms and corporations in said petition mentioned. The defendant neither admits or denies the other allegations in said paragraph contained.

Seventh. And further answering, this defendant admits that the William R. Trigg Company at the time of the institution of this suit had under construction for it one steel tugboat, substantially as stated in subsection (a) of paragraph seven of said petition, and that the construction of the said one tugboat was under the following circumstances, conditions, and agreement:

A. That heretofore, to wit, on the 17th day of July, 1902, your petitioner entered into a contract with the William R. Trigg Company, of Richmond, Virginia, for the construction of one steel tugboat 122 feet long, 24 feet beam, and 12 feet 7 inches depth, with one return tubular boiler 14 ft. 6 inches diameter, 13 ft. 0 inches long, and a compound engine 20" x 40" x 28", with auxiliaries, all equipment, furnishings, etc., work on the same to be commenced within ten (10) days from said date, and to be completed on or before the 17th day of March, 1903, according to the terms, specifications, and conditions contained in a certain written contract, a true copy whereof is herewith filed marked "Exhibit A," and prayed to be read and taken as a part of this answer.

B. That your petitioner, by the terms of said contract, was to pay to the said William R. Trigg Company for the work to be done and the materials furnished under the said contract, as follows:

When one-fifth of the work has been performed.....	\$12,000.00
When two-fifths of the work has been performed.....	12,000.00
When three-fifths of the work has been performed.....	12,000.00
When four-fifths of the work has been performed.....	12,000.00
When completed and delivered at Norfolk, Va.....	12,000.00
Thirty days after delivery.....	8,250.00
Total contract price.....	68,250.00

173 C. That in conformity with the terms of said agreement your petitioner has paid to the said The William R. Trigg Company one installment of twelve thousand (\$12,000) dollars for said steel tug boat.

D. That the said steel tugboat is in an incomplete condition and yet unfinished, and owing to the institution of this suit and the fact that the receiver appointed herein has taken possession of the works and property of the said The William R. Trigg Company, work on said steel tug boat has ceased, and in fact no work is now being done at the ship yards of the said company.

E. That your petitioner suffers great inconvenience, embarrassment and loss by reason of cessation of work upon the steel tug boat, and the fact that the same will not be completed in the time provided for by said agreement.

F. That under the terms, provisions, and covenants in the said written contract contained, the title to the said steel tug boat, so far as the work on the same and materials therein contained had progressed, became absolutely vested in your petitioner when and as the partial payments provided by said contract were made by your petitioner to the said The William R. Trigg Company, and that by the partial payment so as aforesaid made by your petitioner, it has paid for all of the work done upon and materials put in said steel tug-boat.

G. That the title to the said steel tug boat having as aforesaid vested in your petitioner, that the same is not subject to the claims, liens or demands of material men or those performing labor upon said tug boat under the statute of Virginia, or to the payment of liens of any other persons having claims against the said The William R. Trigg Company, and that the William R. Trigg Company is not such a manufacturing company as is contemplated and provided for in said statute.

And further answering paragraph seven of said petition, this defendant denies "that in the contracts made between this defendant company and said private corporations, the title to said vessels was and remained in the said defendant company and was so to remain until the finishing and acceptance of said vessels and the delivery of the possession of same to said individuals and corporations." And this defendant also denies "that said vessels in their present state,

whether completed or incompletd, are assets of said defendant
174 company and that the supply-lien claims of your petitioners and other supply-lien creditors of said defendant company constitute a prior lien on said vessels, superior in dignity to the claims of said private corporations for whom said vessels are being constructed as aforesaid, to wit: The Pennsylvania Railroad Company, the New York, Philadelphia and Norfolk Railroad Company, and the Standard Oil Company of New York, respectively, and to the claims of all other persons and creditors of said defendant company," and on the contrary thereof avers and states the law and fact to be that.

so far as respects the vessels under construction by said company for the Pennsylvania Railroad Company and the New York, Philadelphia and Norfolk Railroad Company, the title thereto, so far as the work on the same and materials therein contained had progressed, became absolutely vested in said corporations, respectively, when and as the partial payments provided for in the contracts for their construction, was made to said The William R. Trigg Company, and that it was the intention, agreement and understanding between the parties to said contracts that the title to said vessels should so pass to and be vested in said corporations, and that said corporations have made all the parties payment provided by said contracts for all work so far done upon and materials put in said vessels. And this defendant denies that either the petitioners or any other person or corporation has any legal claim or demand against or lien or incumbrance upon said one tug boat.

Eighth. And further answering said petition, this defendant says that it has no knowledge or information as to the terms and provisions of the contracts under which the vessels mentioned and described in the eighth paragraph of said petition were being constructed for the government of the United States. If the title to said vessels had passed to the United States, then the various parts designed for said vessels and assembled for the purpose of being incorporated into them, should follow the vessels and also be the property of the United States, and the receiver in recognizing this fact would seem only to have performed his duty and to have done that which the court would instruct him to do.

Ninth. And further answering, this defendant says that there is in the possession of the receiver in this clause a large amount of material and parts especially designed for, and intended to be used and employed in building the one tugboat under construction, as
 175 aforesaid for it, some of which have already been adjusted and fitted to said tugboats, and all of which had been separated from other material and parts used in the construction of vessels by the William R. Trigg Company and in possession of said company when this suit was commenced and the receiver appointed. That the payments made by defendant to said company not only paid for work upon and materials incorporated into the said tug boat so far as the same had progressed, but also for the said materials and parts designed for and intended to be used in the construction of said tug boat.

And this defendant prays that, so far as the same may be necessary for the preservation and enforcement of its rights of property in the premises, that this answer may be treated as a cross-petition or cross-bill; that it may be affirmatively adjudicated and declared that the title to said one tugboat and also to the materials and parts designed for and intended to be used in its construction, is vested in this defendant free, clear, and discharged of and from the claims,

demands, and alleged liens of the said petitioners and all others; that all other necessary and proper proceedings may be had, and orders and decrees passed and entered, for the due and effectual preservation and protection of this defendant's rights in the premises. And having now fully answered, it prays for all proper relief, and will ever pray, etc.

THE NEW YORK, PHILADELPHIA AND
NORFOLK RAILROAD COMPANY,
By W. A. PATTON, *President*.

Solicitor for Defendant.

STATE OF PENNSYLVANIA, CITY OF PHILADELPHIA, TO WIT:

I, Albert J. County, a notary public in and for the city aforesaid, in the State of Pennsylvania, do hereby certify that W. A. Patton personally appeared before the undersigned in the city aforesaid, and made oath in due form of law that he believes the matters and facts set forth and contained in the foregoing answer to be true.

Given under my hand this 6th day of May, 1903.

ALBERT J. COUNTY,
A. J. COUNTY,

[SEAL]

Notary Public.

176 Notary public commission expires 21 January, 1905.

NOTE.—Copy of articles of agreement is not copied herewith because it is attached to the petition of the N. Y. P. & N. R. R. in this record.

Demurrer and answer of Pennsylvania Railroad Company to petition of C. C. Knight & Company, filed in clerk's office, May 4, 1903.

S. H. HAWES & Co.

v.

WILLIAM R. TRIGG COMPANY AND OTHERS.

} In Chancery.

The demurrer and answer of the Pennsylvania Railroad Company to the petition of C. C. Knight and Company filed in this cause.

This defendant says that said petition is not sufficient in law. And without waiving said demurrer but adhering thereto, for answer to said petition or to so much thereof, as it is advised, it is material for it to answer unto, answering saith:

First. This defendant does not admit that petitioners furnished supplies to the William R. Trigg Company at the dates and in the amounts stated in said petition; that said supplies were necessary to the operation of said company, or that said petitioners claimed, filed, and perfected a lien on the property of said company, in the manner prescribed by law, but calls for strict proof of all such matters and

things. It does deny that the William R. Trigg Company is a manufacturing company under the statute law of the State, or that the statutes of the Commonwealth relative to manufacturing companies apply to or embrace the William R. Trigg Company. It admits the institution of this suit; that the same is now pending, and the appointment of Lilburn T. Myers as receiver of the assets and property of the William R. Trigg Company. It denies that the petitioners are supply-lien creditors of said William R. Trigg Company.

Second. It denies that said petitioners are entitled to, or have
177 a prior lien for, \$5,163.56, or for any other amount upon all the personal property of said company other than that forming a part of its plant, or a lien upon all the estate both real and personal of, and to which the said company was possessed and entitled at the time the bill of complaint was filed in this cause, and a receiver appointed herein.

Third. And further answering, this defendant says that it has no information as to the statement of facts set forth and contained in the third paragraph of said petition other than said statement itself.

Fourth. And further answering this defendant neither admits or denies the conclusions of law and allegations contained in the fourth paragraph of said petition.

Fifth. And further answering, defendant says that it is not advised and has no information as to the statement of facts contained in the fifth paragraph of said petition. And that if said averments be established, it submits all questions and conclusions of law arising thereon to the determination of this honorable court.

Sixth. And further answering, this defendant denies all and so much of the sixth paragraph of said petition as avers and alleges that petitioners and all other supply-lien creditors of the William R. Trigg Company have a prior lien or a lien of any nature upon the vessels constructed and being constructed at its yards and docks by said company for the various firms and corporations in said petition mentioned. The defendant neither admits or denies the other allegations in said paragraph contained.

Seventh. And further answering, this defendant admits that the William R. Trigg Company at the time of the institution of this suit had under construction for it two steam tug boats, substantially as stated in sub-section (a) of paragraph seven of said petition, and that the construction of the said two tug boats was under the following circumstances, conditions, and agreement:

A. That on the 30th day of June, 1902, it entered into a contract with the William R. Trigg Company of Richmond, Virginia, for the construction of two steam tug boats of the "Lancaster" class at Richmond, Virginia, upon the terms and conditions set forth in the written agreement of that date, a true copy whereof is herewith filed, marked "Exhibit A," and prayed to be read and taken as a part of this answer.

178 B. That by the second clause of said contract your petitioner agreed to pay to the said The William R. Trigg Company for

the work done and material furnished, in conformity with this agreement upon and immediately after inspection and written certification of approval thereof by duly authorized inspector or inspectors of your petitioners, the sum of \$97,750.00 for the two boats (being \$48,875.00 per boat) in ten (10) partial payments as follows:

When 1/10 of the work is performed.....	\$10,000.00
When 2/10 of the work is performed.....	10,000.00
When 3/10 of the work is performed.....	10,000.00
When 4/10 of the work is performed.....	10,000.00
When 5/10 of the work is performed.....	10,000.00
When 6/10 of the work is performed.....	10,000.00
When 7/10 of the work is performed.....	10,000.00
When 8/10 of the work is performed.....	10,000.00
When completed.....	7,750.00
30 days after delivery.....	
	<hr/> \$97,750.00

C. That in conformity with the terms of said agreement your petitioner has paid to the said The William R. Trigg Company three instalments of ten thousand (10,000) dollars each for each of said steam tug boats, aggregating the sum of sixty thousand (60,000) dollars.

D. That the said two steam tugs are in an incomplete condition and yet unfinished, and owing to the institution of this suit and the fact that the receiver appointed herein has taken possession of the works and property of the said The William R. Trigg Company, work on said steam tug boats has ceased, and in fact no work is now being done at the ship yards of the said company.

E. That your petitioner suffers great inconvenience, embarrassment and loss by reason of cessation of work upon the two steam tugs, and the fact that the same will not be completed in the time provided for by said agreement.

F. That under the terms, provisions and covenants in the said written contract contained, the title to the said steam tug boats so far as the work on the same and materials therein contained had progressed, became absolutely vested in your petitioner when
179 and as the partial payments provided by said contract were made by your petitioner to the said The William R. Trigg Company, and that by the partial payments so as aforesaid made by your petitioner it has paid for all of the work done upon and materials put in said steam tugs.

G. That the title to the said two steam tugboats having as aforesaid vested in your petitioner, that the same is not subject to the claims, liens, or demands of material men or those performing labor upon said tugs under the statute of Virginia, or to the payment of liens of any other persons having claims against the said The William R. Trigg Company, and that the William R. Trigg Company is not such a manufacturing company as is contemplated and provided for in said statute.

And further answering paragraph seven of said petition, this defendant denies "that in the contracts made between said defendant

company and said private corporations the title to said vessels was and remained in the said defendant company and was so to remain until the finishing and acceptance of said vessels and the delivery of the possession of same to said individuals and corporations." And this defendant also denies "that said vessels in their present state, whether completed or incomplete, are assets of said defendant company and that the supply-lien claims of your petitioners and other supply-lien creditors of said defendant company constitute a prior lien on said vessels, superior in dignity to the claims of said private corporations, for whom said vessels are being constructed as aforesaid, to wit: The Pennsylvania Railroad Company, the New York, Philadelphia and Norfolk Railroad Company, and the Standard Oil Company of New York, respectively, and to the claims of all other persons and creditors of said defendant company," and on the contrary thereof avers and states the law and fact to be that, so far as respects the vessels under construction by said company for the Pennsylvania Railroad Company and the New York, Philadelphia and Norfolk Railroad Company, the title thereto, so far as the work on the same and materials therein contained had progressed, became absolutely vested in said corporations respectively, when and as the partial payments provided for in the contracts for their construction, was made to said The William R. Trigg Company, and that it was the intention, agreement and understanding

between the parties to said contracts that the title to said
 180 vessels should so pass to and be vested in said corporations, and that said corporations have made all the partial payments provided by said contracts for all work so far done upon and materials put in said vessels. And this defendant denies that either the petitioners or any other person or corporation has any legal claim or demand against, or lien or encumbrance upon said two tugboats.

Eighth. And further answering said petition, this defendant says that it has no knowledge or information as to the terms and provisions of the contracts under which the vessels mentioned and described in the eighth paragraph of said petition are being constructed for the Government of the United States. If the title to said vessels had passed to the United States, then the various parts designed for said vessels and assembled for the purpose of being incorporated into them, should follow the vessels and also be the property of the United States, and the receiver, in recognizing this fact, would seem only to have performed his duty and to have done that, which the court would instruct him to do.

Ninth. And further answering, this defendant says that there is in the possession of the receiver in this cause a large amount of material and parts especially designed for and intended to be used and employed in building the two tug boats under construction as aforesaid for it, some of which had already been adjusted and fitted to said tug boats, and all of which had been separated from other material and parts used in the construction of vessels by the William R. Trigg Company and in possession of said company when this suit

was commenced and the receiver appointed. That the payments made by defendant to said company not only paid for work upon and materials incorporated into the said tug boats so far as the same had progressed, but also for the said materials and parts designed for and intended to be used in the construction of said tug boats.

And this defendant prays that, so far as the same may be necessary for the preservation and enforcement of its rights of property in the premises, that this answer may be treated as a cross-petition or cross-bill, that it may be affirmatively adjudicated and declared that the title to said two tug boats and also to the materials and parts designed for and intended to be used in their construction is vested in this defendant free, clear, and discharged of and from the claims, demands, and alleged liens of the said petitioners and all others; that all other necessary and proper proceedings may
181 be had, and orders and decrees passed and entered for the due and effectual preservation and protection of this defendant's rights in the premises. And having now fully answered it prays for all proper relief, and will ever pray, etc.

THE PENNSYLVANIA RAILROAD COMPANY,
By CHAS. E. PUGH,
Vice-President.

FRANCIS L. SMITH,
Solicitor for Defendant.

STATE OF PENNSYLVANIA, CITY OF PHILADELPHIA, TO-WIT:

I, Hiram H. Potts, a notary public in and for the city aforesaid, in the State of Pennsylvania, do hereby certify that Chas. E. Pugh personally appeared before the undersigned in the city aforesaid, and made oath in due form of law that he believes the matters and facts set forth and contained in the foregoing answer to be true.

Given under my hand this first day of May, 1903.

[SEAL]

HIRAM H. POTTS,
Notary Public.

Commission expires February 26th, 1905.

NOTE.—Copy of Articles of Agreement is not copied here because it is attached to the demurrer and answer of the Pennsylvania Railroad Company in this record.

Demurrer and answer of First National Bank of Richmond.

Filed in Court under Decree of November 14th, 1906.

In the Chancery Court of the City of Richmond.

S. H. HAWES & COMPANY, WHO SUE, ETC. }

v.
WM. R. TRIGG COMPANY ET ALS. }

The demurrer and answer of the First National Bank of Richmond to a bill of complaint exhibited against it and others by S. H. and

H. S. Hawes, partners, trading as S. H. Hawes & Company, in the Chancery Court of the city of Richmond, and to a petition
 182 filed in the above cause against it and others by Charles C. Knight, Jno. S. Knight, and Samuel S. McCormick, partners, trading under the firm name and style of C. C. Knight & Co.

DEMURRER.

This respondent demurs to the said bill and said petition, and says that neither the said bill nor the said petition are sufficient in law.

ANSWER.

And without waiving its said demurrer, but insisting on the same, this respondent, for answer to the said bill and petition, or to so much of each as it is advised that it is material or necessary for it to answer, answering says:

1st. This respondent denies that the defendant, William R. Trigg Company, is a manufacturing company within the meaning of sections 2485, 2486, and 2487 of the code of Virginia, edition of 1887, as amended by the acts of the legislature in force upon the date of the filing of said bill and petition.

2nd. This respondent does not know whether the defendant, the William R. Trigg Company, is indebted to the plaintiffs to the extent and in the manner set out in the plaintiff's bill, nor whether said defendant is indebted to said petitioners in the manner and to the extent set out in said petition, nor whether, if so indebted to the said plaintiffs and to said petitioners, the supplies alleged to have been furnished by said plaintiffs and petitioners to said defendant, William R. Trigg Company, were supplies necessary to the operation of the plant of the said defendant company, nor whether said plaintiffs and said petitioners, or either of them, have complied with the said statutes in such manner as to entitle them to the liens upon the property of said defendant company, claimed by said plaintiffs and said petitioners in the said bill and petition, respectively, and this respondent calls for strict proof of all of these allegations of said bill and petition.

3rd. This respondent admits that the said defendant, William R. Trigg Company, did, pursuant to the resolution of its board of directors, adopted on May 11th, 1900, execute the assignment and
 183 power of attorney to this respondent, mentioned in paragraph

(b) of the 5th section of the said petition, empowering this defendant, in consideration of certain loans made, and to be made, by it to said defendant company to collect all payments due and to become due to the said defendant company by the United States on account of the contracts, entered into between said defendant company and certain officers of the United States Government for the construction of two revenue cutters designated as No. 7, R. C. S., and No. 8, R. C. S., and that said assignments and power of attorney were duly executed and delivered to this respondent prior to the completion of said revenue cutters and prior to the allowance of the

claims of said defendant company against the United States for their construction, and that said assignment and power of attorney were duly recognized by said United States. This respondent avers that upon the faith and security of said assignments and power of attorney, this respondent loaned to the said company large sums of money, and that there is now due and owing to this respondent by said defendant company a balance of \$52,036, with interest thereon from the 30th day of September, 1902, on the said sums of money so loaned by this respondent to said company.

4th. This respondent avers and charges that the validity of said assignment and power of attorney has been recognized by the officers of the United States, who pursuant to the request of this respondent, and said William R. Trigg Company, remitted to this respondent vouchers of the United States Government, payable to the said William R. Trigg Company for payment on said contracts, as and when the same became due, and this respondent avers and charges that the validity of said assignment and power of attorney has never been assailed or questioned by either the United States or the said William R. Trigg Company, nor by any one until the filing of the said petition, and this respondent avers and charges that the said assignment and power of attorney is not null and void, but is valid and of full force and effect. This respondent further avers and charges that the balance due on said contracts of the United States has been paid by the United States into bank to the credit of this court in this cause, and that it is not competent to either the said petitioners or any other creditors of said defendant, William R. Trigg Company, to assail the validity of said assignment and power of attorney.

5th. This respondent denies that either the said plaintiffs
184 or the said petitioners have a lien, prior to the lien of this respondent upon the said claim, under the above mentioned statutes or in any other manner, and avers and charges that the liens, if any, acquired by either the said plaintiffs or the said petitioners upon the said claim of the William R. Trigg Company against the United States under the said statutes of Virginia, are subject and subordinate to the lien of this respondent under said power of attorney or assignment, and that, so far as the said statutes of Virginia can be construed to give the said plaintiffs and said petitioners, or any other parties to this cause, a lien upon said claim of said William R. Trigg Company against the United States, prior to the lien of the said power of attorney or assignment, said statutes of Virginia are in conflict with the provisions of section 1 of the 14th amendment of the Federal Constitution, as well as with the provisions of the constitution of the State of Virginia, and are therefore void to that extent.

And now having fully answered, this respondent prays to be hence dismissed, etc.

FIRST NATIONAL BANK OF RICHMOND, VIRGINIA,
By GEORGE BRYAN and CHRISTIAN & CHRISTIAN,

Counsel for Respondent.

*Demurrer and answer of Virginia Trust Company, trustee, et als.,
filed in court under decree of November 14th, 1906.*

In the Chancery Court of the city of Richmond.

S. H. HAWES & COMPANY, WHO SUE, ETC.,	}
v.	
WM. R. TRIGG COMPANY ET ALS.	

The joint demurrer and answer of the Virginia Trust Company, trustee under four certain assignments of Wm. R. Trigg Company, to wit, as hereinafter set out, and of Jas. N. Boyd, Thomas Atkinson, S. D. Crenshaw, J. J. Montague, H. M. Flagler and Mattie E. Boshier, T. C. Williams, Jr., and Geo. L. Christian, executors of Robert S. Boshier, deceased, beneficiaries under said assignments, to a bill of complaint exhibited against them and others by S. H. and H. S. Hawes, partners, trading as S. H. Hawes & Co., in the Chancery Court of the city of Richmond, and to a petition filed in the above cause against them and others by Charles C. Knight, Jno. S. Knight and Samuel S. McCormick, partners, trading under the firm name and style of C. C. Knight & Company.

DEMURRER.

This respondent demurs to the said bill and said petition and says that neither the said bill nor the said petition are sufficient in law.

ANSWER.

And without waiving their said demurrer, but insisting on the same, these respondents, for answer to the said bill and petition, or to so much of each as they are advised that it is material or necessary for them to answer, answering say:

1st. These respondents deny that the defendant, William R. Trigg Company, is a manufacturing company within the meaning of sections 2485, 2486 and 2487 of the code of Virginia, edition of 1887, as amended by the acts of the Legislature in force upon the date of the filing of said bill and petition.

2nd. These respondents do not know whether the defendant, the Wm. R. Trigg Company, is indebted to the plaintiffs to the extent and in the manner set out in the plaintiff's bill, nor whether said defendant is indebted to said petitioners in the manner and to the extent set out in said petition, nor whether, if so indebted to the said plaintiffs and to said petitioners, the supplies alleged to have been furnished by said plaintiffs and petitioners to said defendant, Wm. R. Trigg Company, were supplies necessary to the operation of the plant of the said defendant company, nor whether said plaintiffs and said petitioners, or either of them, have complied with the said statutes in

such manner as to entitle them to the liens upon the property of said defendant company, claimed by said plaintiffs and said petitioners in the said bill and petition respectively, and these respondents call for strict proof of all of these allegations of said bill and petition.

3rd. These respondents admit the execution by the said Wm. R. Trigg Company of the four certain assignments to the Virginia Trust Company, trustee, one of these respondents, of the claim of the Wm. R. Trigg Company against the United States, designated as a certain "loss claim" in said petition; and that the dates of said four assignments are correctly stated in said petition and that the said assignments were executed for the purpose of securing these respondents other than the said Virginia Trust Company, the payment of the respective sums of money as set out in the said petition.

4th. These respondents aver and charge that these several assignments were executed for the purpose of securing money actually advanced to the said Wm. R. Trigg Company upon the faith and security of the said assignments, and these respondents deny that the said assignments are null and void and aver that the same and each of them is valid, and prays that this court will sustain their validity and protect these respondents by a proper decree to that effect. And these respondents aver and charge that the entire amount secured to each of them by said several assignments is wholly due and unpaid.

5th. These respondents deny that either the said plaintiffs or the said petitioners have a lien, prior to the lien of these respondents upon the said claim, under the above mentioned statutes, or in any other manner, and aver and charge that the liens, if any, acquired by either the said plaintiffs or the said petitioners upon the said claim of the Wm. R. Trigg Company against the United States, under the said statutes of Virginia, are liens only upon the surplus of said Wm. R. Trigg Company in its said claim against the United States, after the satisfaction of the claims of these respondents secured by said assignments, and that, so far as the said statutes of Virginia can be construed to give the said plaintiffs and said petitioners, or any other parties to this cause, a lien upon said claim of said Wm. R. Trigg Company against the United States, prior to the lien of the said assignments, said statutes of Virginia are in conflict with the provisions of section 1 of the 14th amendment of the Federal Constitution, as well as with the provisions of the constitution of the State of Virginia, and are therefore void to that extent.

And now having fully answered, these respondents pray to be hence dismissed, etc.

CHRISTIAN & CHRISTIAN,
J. JORDAN LEAKE,

Counsel of above Respondents.

187 *Demurrer and answer of Virginia Trust Company, filed in court under decree of November 14th, 1906.*

In the Chancery Court of the city of Richmond, Virginia.

S. H. HAWES & Co. }
 v. }
 WM. R. TRIGG CO. & ALS. }

To the Honorable DANIEL GRINNAN, *judge of the said Chancery Court:*

The Virginia Trust Company, party defendant in this cause, demurs to the original bill in this cause and to the petition heretofore filed in this cause by C. C. Knight & Co., and says that said bill and petition are not sufficient in law. And this defendant answering said bill and petition, says:

That the rights and interests of this defendant are set forth in its petition filed in this cause by leave of court under a decree entered herein on July 22nd, 1904, and this defendant adopts the averments of said petition as if they were herein reiterated specifically and literally.

This defendant denies that the William R. Trigg Company was a manufacturing company within the meaning of the labor and supply-lien statutes of Virginia; and this defendant also denies that the supplies furnished by the various supply-lien creditors claiming liens in this cause were necessary to the operation of the said William R. Trigg Company, or that the memorandum or claim for said supplies were in the form required by the statute in such cases made and provided, or was filed as required by said statute; and this defendant, therefore, denies that the said supply creditors are entitled to the liens claimed by them upon the real and personal property of the said William R. Trigg Company.

This defendant also claims and avers that the supply-lien statutes under which said supply creditors claim liens in this cause (being section 2485 and subsequent sections of the code of Virginia) are null and void, because they are inconsistent with the first section
 188 of the fourteenth amendment to the Constitution of the United States, and also with the provisions of the constitution of Virginia.

This defendant is not informed whether the firm of C. C. Knight & Co. furnished supplies as set forth in their said petition, or whether a memorandum of the amount and consideration of their claim was filed as therein alleged; but calls for strict proof of all said allegations.

This defendant admits that the William R. Trigg Company did assign to this defendant the right and power to collect all payments falling due upon the "Galveston," including the reserve retained by the United States Government under the contract for the construction of said vessel; and upon the faith of said assignment, this

defendant did advance to the William R. Trigg Company the sums of money set out in its petition filed in this cause on July the 22nd, 1904; and the amounts, with interest, set forth in its said petition, are still due and unpaid; and this defendant denies that said assignment and the power of attorney given to this defendant by the William R. Trigg Company to collect said payments are null and void; but, on the contrary, this defendant avers and charges that the said assignment and power of attorney are valid, and that the rights and liens of this defendant in the premises are valid and superior to the claims of the said C. C. Knight & Co. and the other creditors of the William R. Trigg Company, whether they be supply creditors or general creditors.

This defendant admits that the said William R. Trigg Company, at the time it was placed in the hands of a receiver, had under construction for the United States Government certain vessels, viz: One steel hull seagoing suction dredge to be called the "Benyuard," one steel propeller to be called the "Mohawk," and one cruiser to be called the "Galveston," under contracts which have been filed in these proceedings, between the United States Government and the said William R. Trigg Company; and this defendant alleges that the United States, to the extent of its partial payments under said contracts, became entitled to the property in the "Benyuard" and a lien upon the other vessels mentioned to the extent of such partial payments, and that thereby there arose in favor of the United States Government rights and liens superior and prior to the rights of the William R. Trigg Company, or the creditors of the said company, whether they be supply creditors or general creditors; and that

189 the said contracts did not need to be recorded under any statute of Virginia, and that such statutes (if there be any touching said contracts) are not binding upon the United States.

And this defendant further alleges and claims that the supply-lien statute of Virginia, relied upon by the said C. C. Knight & Co. and the other supply creditors as the foundation of their alleged liens in this cause, was and is unconstitutional and void, because it is inconsistent with the first section of the fourteenth amendment to the Constitution of the United States, and is also opposed to the provisions of the constitution of Virginia.

This defendant is also advised, and therefore claims and avers, that as to the reserves in the hands of the United States at the time of the appointment of the receiver in this cause arising under the contracts for the construction of the "Mohawk," "Benyuard," and "Galveston," such reserves form a means of indemnification and protection in the hands of the United States against loss in the construction of either or any of the said vessels, which it was the right of the United States to avail itself of for its own protection, and its duty to avail itself of for the protection and exoneration of this defendant as surety on either or any of the contracts for the construction of said vessels; and that to the extent to which such reserves have been actually paid over into the hands of this court the same

remains subject to the prior lien and right of this defendant to have the same applied in exoneration of any liability as surety upon either or any of the aforesaid contracts.

This defendant therefore denies that the assignment in its favor of the reserve upon the "Galveston" was, or is, null and void as to the William R. Trigg Company or any of its supply creditors, or other creditors; but is advised and claims that said assignment was valid, and that this defendant is entitled to the benefit thereof.

This defendant denies that the rights, interests, and liens of the United States in and against the "Galveston," the "Mohawk," and the "Benyuard" under contracts with the William R. Trigg Company are subject or subordinate in any way to the rights, interests, and liens of the supply creditors of the William R. Trigg Company, or of any other creditors of said company; but, on the contract, this defendant is advised and claims that the rights, interests, and liens of the United States Government under said contracts are
 190 valid and prior and superior to the rights, interests or liens of any supply creditors, or other creditors, of the said William R. Trigg Company.

And having fully answered, it prays to be hence dismissed, &c.

VIRGINIA TRUST CO.,

[SEAL.]

By CHRISTIAN & CHRISTIAN,

Its Counsel.

And at another day, to wit, at a Court of Chancery for the city of Richmond, continued by adjournment, and held at the court-room thereof, in the city hall, in said city, on the 28th day of July, 1903.

S. H. HAWES & COMPANY, PLAINTIFFS,

v.

WILLIAM R. TRIGG CO., RICHMOND TRUST & SAFE
 Deposit Co., trustee, and the Commercial Trust Co.
 of the city of Philadelphia, trustee, defendants.

In this cause, the bill having been taken for confessed as to the defendants The William R. Trigg Company and the Richmond Trust & Safe Deposit Company, trustee, on which defendants process has been duly served, and they having failed to appear and plead, answer, or demur to said bill; and the defendant the Commercial Trust Company of the city of Philadelphia, trustee, having heretofore, by leave of court, filed its answer to said bill, to which answer the complainant has replied generally; and the Pennsylvania Railroad Company and the New York, Philadelphia & Norfolk Railroad Company having heretofore, and the Standard Oil Company of New York, having this day, by leave of court, filed their several demurrers and answers to said bill, which demurrers have been set down for hearing, and to which answers the plaintiffs have replied generally; and it appearing that process has been duly served upon all the defendants named in the petition of C. C. Knight & Co., except Henry M. Flagler, the Pennsylvania Railroad Company, the New York, Philadelphia & Norfolk Railroad Company, and the

Standard Oil Company of New York, and that the three last named defendants have filed their several demurrers and answers to said petition, and that said defendant, Henry M. Flagler, has this 191 day appeared, by counsel, and consented that said petition may be docketed and set for hearing as to him; and it further appearing that the William R. Trigg Company and Lilburn T. Myers, receiver of the William R. Trigg Company, the defendants named in the petition of the Bucyrus Company, have heretofore, by leave of court, filed their separate answers to said petition; to which answers said petitioner has replied generally.

Thereupon, this cause, coming on this day to be heard upon the said bill taken for confessed as to the defendants, the William R. Trigg Company and the Richmond Trust & Safe Deposit Company; and on the exhibits with said bill; and on the answer of the defendant, the Commercial Trust Company of the city of Philadelphia, trustee, and on general replication to said answer; and on the demurrers and answers of the Pennsylvania Railroad Company and the New York, Philadelphia & Norfolk Railroad Company, and the Standard Oil Company of New York, filed as aforesaid, to the bill by leave of court; and on the said petition of C. C. Knight & Co., and on the demurrers and answers to said petition filed by the Pennsylvania Railroad Company, the New York, Philadelphia & Norfolk Railroad Company and the Standard Oil Company of New York; and on the petition of the Bucyrus Company, and the separate answers to said petition of the William R. Trigg Company and of the receiver of the William R. Trigg Company; and on the petitions of sundry creditors claiming to be lien creditors of the William R. Trigg Company, who have heretofore filed said petitions by leave of court and been made parties to these proceedings by decrees entered in this cause, and upon various exhibits filed with said petitions and with the aforesaid answers; and upon the various reports of the receiver filed herein from time to time, and upon all papers formerly read. And thereupon the said cause was docketed and set for hearing as to all parties. And thereupon this cause was argued by counsel.

On consideration whereof, the court doth overrule the demurrers of the Pennsylvania Railroad Company and the New York, Philadelphia & Norfolk Railroad Company and of the Standard Oil Company of New York to the bill in this cause.

And thereupon the court doth adjudge, order, and decree that this cause be referred to one of the commissioners of this court, with instructions to take, settle, and report the following accounts and inquiries, namely:

192 First. An account showing the property of the William R. Trigg Company, and the various kinds of said property, and the values thereof.

Second. An account of all debts due by the said William R. Trigg Company, and of all liens upon its property, and the various priorities of such liens, and over which of the property the several liens extend.

Third. The commissioner shall inquire and report upon the various matters set forth in the said petition of C. C. Knight & Co.

Fourth. The commissioner shall inquire and report, separately and as speedily as possible upon the matters set forth in the petition of the Bucyrus Company; and the commissioner shall further report, what portion, if any, of the \$10,683.33 paid to the Bucyrus Company by the William R. Trigg Company shall be refunded by it and to whom.

Fifth. Shall inquire into and make report as to the ownership of the several boats and vessels in course of construction by the William R. Trigg Company for the Pennsylvania Railroad Company and the New York, Philadelphia & Norfolk Railroad Company, and the Standard Oil Company of New York, and also the boats and vessels which are in course of construction by said company for the United States Government, so far as the work on the same and the materials therein contained had progressed when this suit was instituted, and also, of the ownership of the material and parts especially designed for and intended to be used and employed in building said boats and vessels respectively, and which was in and upon the premises of the said William R. Trigg Company at the time of the institution of this suit, and whether or not the legal title to said boats and vessels, passed to and vested in the several corporations for whom they were being built, at successive stages of their construction, and if so, at what time or times. How much, if any, of such material or parts had already been adjusted and fitted to said boats and vessels, or either of them; and how much of said parts or material intended for any particular boat or vessel had been separated from the parts or materials intended and designed to be used in the construction of other boats and vessels, making and returning all proper classifications and inventories in this connection.

And with the above in view he shall take and return with his report, any and all evidence offered by any party, tending to
193 prove the intention of the contracting parties, as to the time or times when the title to said boats and vessels so far as the construction thereof had progressed, and to said parts and materials, should pass to and become vested in the purchasers thereof.

Sixth. An account of the transactions of the receiver in this cause.

Seventh. And any other matter specially stated which he shall deem necessary, or which any party may require him to state specifically.

All of which the said commissioner shall report with all convenient dispatch, together with all evidence taken before him.

Before proceeding to execute the inquiries above directed, the said commissioner shall give notice of the time and place of doing so by publishing notice of such time and place once a week for four successive weeks in the "News-Leader," a newspaper published in the city of Richmond, Virginia, which publication shall be equivalent to personal service of such notice on the parties, or any of them.

The terms of this decree were settled on the 23rd inst., and the same was directed by the court to be entered on that day, but its entry not

having been made on this day, it is now directed to be entered as of said 23rd inst. nunc pro tunc.

And at another day, to wit, at a Court of Chancery for the city of Richmond, continued by adjournment, and held at the court-room thereof, in the city hall, in said city, on the 1st day of December, 1904.

S. H. HAWES & Co. }
 v. }
 WM. R. TRIGG CO. ET ALS. }

It being suggested to the court that J. R. V. Daniel, one of the commissioners in chancery of this court, to whom the execution of the decree of inquiry entered in this cause on July 28th, 1903, was committed, has departed this life, the court doth adjudge, order, and decree that this cause be now referred to Eugene C. Massie, another of the commissioners of this court, who shall complete the execution of

194 said decree of inquiry. And the court doth further adjudge, order, and decree that said Commissioner Massie shall consider as taken before him and filed with him all testimony taken and exhibits filed before Commissioner Daniel, together with the briefs of counsel upon the issues presented, and shall report the result of his inquiries with all convenient dispatch.

File No. 433.

Virginia: In the Chancery Court of the city of Richmond.

S. H. HAWES & COMPANY, WHO SUE, &C., } Report No. 4 of Commis-
 v. } sioner E. C. Massie.
 WILLIAM R. TRIGG COMPANY, &C. }

1906, July 19, received from Commr. Massie and filed in clerk's office.

CHAS. O. SAVILLE, *Clerk*.

Virginia: In the Chancery Court of the city of Richmond.

CHAMBERS OF COMMISSIONER MASSIE,
No. 1103 E. Main st., Richmond, Va., April 12, 1906.

S. H. HAWES & COMPANY, WHO SUE, &C., } Report No. 4 of Commis-
 v. } sioner Massie.
 WILLIAM R. TRIGG COMPANY, &C. }

To the Honorable DANIEL GRINNAN, *judge of the Chancery Court of the city of Richmond*:

The decree of July 28, 1903, in this cause (file No. 149), contains the following clause:

"Third. The commissioner shall inquire and report upon the various matters set forth in the said petition of C. C. Knight and Company."

195 First. The first matter set forth in said petition was the claim of petitioners to a supply lien for \$5,163.56.

This claim was passed on in my report No. 1 (file No. 349).

Second. The second matter set forth in said petition concerns certain assignments of the William R. Trigg Company to the Virginia Trust Company, trustee, to secure certain advances of cash made by Robert S. Boshier and others amounting to the principal sum of \$186,698. Said assignments were of what is known as "loss claims" of the Trigg Company against the United States Government, the same amounting to \$256,000.00, representing losses sustained in the construction of the torpedo boats "Shubrick," "Stockton," and "Thornton," and the torpedo boat destroyers "Decatur" and "Dale."

These assignments are as follows:

(1) One dated October 10, 1902, in favor of—

Robert S. Boshier for	\$20, 246. 00
James N. Boyd for	20, 246. 00
Thomas Atkinson for	20, 246. 00
S. D. Crenshaw for	11, 705. 00
J. J. Montague for	10, 630. 00
H. M. Flagler for	41, 625. 00
Total	124, 698. 00

(2) One dated November 17, 1902, in favor of—

Robert S. Boshier for	5, 000. 00
James N. Boyd for	5, 000. 00
Thomas Atkinson for	5, 000. 00
S. D. Crenshaw for	2, 800. 00
J. J. Montague for	2, 200. 00
Total	20, 000. 00

196 (3) One dated November 19, 1902, in favor of—

Robert S. Boshier for	\$7, 500. 00
James N. Boyd for	7, 500. 00
Thomas Atkinson for	7, 500. 00
S. D. Crenshaw for	4, 200. 00
J. J. Montague for	3, 300. 00
Total	\$30, 000. 00

(4) One dated November 25, 1902, in favor of—

Robert S. Boshier for	\$3, 000. 00
James N. Boyd for	3, 000. 00
Thomas Atkinson for	3, 000. 00
S. D. Crenshaw for	1, 680. 00
J. J. Montague for	1, 320. 00
Total	\$12, 000. 00
Grand total	\$186, 698. 00

These "loss claims" were pending before Congress at the date of the above assignments, and are still so pending.

Petitioners claim that each of said assignments is null and void under section 3477, Revised Statutes of the United States, and that whatever may be realized from said "loss claims" will be subject to theirs and the other supply lines.

Third. Another matter set forth in said petition concerns certain assignments of what is known as "reserved claims" representing funds reserved by the United States Government under its contracts with the William R. Trigg Company for the construction of vessels.

1. Reserved claim on "Benyuard" assigned to the Savings Bank of Richmond.

2. Reserved claim on the "Mohawk" assigned to the First National Bank of Richmond.

197 3. Reserved claim on the "Galveston" assigned to the Virginia Trust Company.

Petitioners claim that each of these assignments is likewise null and void under 3477 of the Revised Statutes of the United States and that said reserved claims are subject to theirs and the other supply liens.

Fourth. Other matters set forth in said petition concern the title and value of boats "in process," and materials set aside therefor:

(A) Boats in process for the United States Government:

(1) "Benyuard," 70% complete, valued at.....	\$177, 000. 00
(2) "Mohawk," 95% complete, valued at.....	\$200, 000. 00
(3) "Galveston," 70% complete, valued at.....	\$700, 000. 00

(B) Boats in process for certain corporations:

(1) Penns. R. R. Co., "Bristol" & "Chester," 70% complete, valued at.....	\$68, 000. 00
(2) N. Y., Philadelphia & Norfolk R. R. Co., "Hull No. 22," valued at	10, 000. 00
(3) Standard Oil Company, "Lucas," valued at.....	220, 000. 00

Petitioners claim that the value of these boats and of all material set aside therefor is subject to theirs and the other supply liens.

The depositions concerning the matters set forth in said petition have heretofore been returned to the court; but the exhibits therewith, which were not so returned, are filed herewith. All said evidence, as well as the pleadings and exhibits among the papers in this cause and the written arguments of counsel, have been duly considered by me.

The contentions of petitioners involve the construction of section 3477 of the Revised Statutes of the United States. I shall first endeavor to give a full statement of all the decisions of the Supreme

198 Court of the United States and of some of the decisions of inferior courts, concerning this statute, and shall then apply the doctrine so ascertained to the facts of the present case.

The statute in question reads as follows:

"Section 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment

thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgements of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

DECISIONS OF THE SUPREME COURT OF THE UNITED STATES.

1. *Burke v. Child*, 88 U. S., 441. N. P. Trist had a claim against the United States Government for services touching the treaty of Gaudaloupe Hidalgo. He agreed to pay Child 25% of whatever sum might be allowed by Congress.

April 20, 1870, Congress appropriated \$14,559.90 to pay the claim. Child's executor applied for payment, and the money was held in the Treasury by the Government to await the decision of a suit in the Supreme Court of the District of Columbia.

Referring to the act the court said:

"That the claim set up in the bill to a specific part of the money appropriated is within this statute is too clear to admit of doubt. It would be a waste of time to discuss the subject."

2. *United States v. Gillis*, 95 U. S., 407. This was a suit involving the validity of an assignment of a claim for cotton taken by the United States Army. Referring to the statute in question, the court said:

"No language could be broader or more emphatic than these enactments. The words embrace every claim against the United States, however arising, of whatever nature it may be, and wherever or whenever presented.

"We think, therefore, the act of 1853 is of universal application, and covers all claims against the United States, in every tribunal in which they may be asserted."

3. *Edwin v. United States*, 97 U. S., 392. The question in this case was whether a claim for cotton passed to an assignee in bankruptcy. The court held that the statute "applies only to cases of voluntary assignment of demands against the United States. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees, or assignees in bankruptcy are not within the evil at which the statute aimed."

4. *Spofford v. Kirk*, 97 U. S., 484. Kirk had a claim against the United States in the hands of Hosmer & Co. for collection, and issued two orders on Hosmer & Co., on January 14, 1873, payable to Wharton and Taylor, respectively. These orders were duly accepted by Hosmer & Co., and then assigned for value to Spofford upon the written assurance of Hosmer & Co. that Kirk's claim had been allowed by the Government. After having made his assignments, Kirk admitted their validity in a letter to Hosmer & Co. But when the

government warrant actually issued, Kirk undertook to repudiate the orders. Suit was then brought by Spofford in the Supreme Court of the District of Columbia to enjoin Hosmer & Co. from turning over to Kirk the funds collected by them from the Government. In this case there were strong equitable reasons to sustain the assignments, but they were nevertheless held to be void under the statute.

In referring to the statute, the court said:

“It would seem to be impossible to use language more comprehensive than this. It embraces alike legal and equitable
200 assignments. It includes powers of attorney, orders, or other authorities for receiving the payment of any such claim, or any part or share thereof. It strikes at every derivative interest, in whatever form acquired, and incapacitates their claimants upon the Government for creating an interest in the claim in any other than himself.”

5. *McKnight v. United States*, 98 U. S., 179. This was the case of an assignment by Hart, a government contractor for furnishing army supplies. The assignment was recognized by the Government and a treasury warrant was issued to McKnight for a portion of the fund. McKnight sued to recover the balance of the fund; and thereupon, the United States set up a counter-claim to recover what had already been paid McKnight. The Court of Claims adjudged against both parties, and both appealed. The court held that the assignment was wholly void and said:

“It conferred no right that the United States was bound to regard. The payment of a part was not a waiver of this objection as to the residue. An agreement to that effect, express or implied, looking to the future, would have been without validity. There could have been no consideration for it, and no one had authority to make it. The statute is conclusive upon the subject.”

The judgment of the Court of Claims was affirmed.

6. *Goodman v. Niblack*, 102 U. S., 556. Sloo was interested in a claim against the United States for carrying mails.

He became insolvent, executed a deed of general assignment, and died. Subsequently, Niblack, admr. d. b. n. of Sloo's estate was paid \$150,000.00 out of a recovery from the Government.

Goodman had a judgment against Sloo, recovered in Sloo's lifetime, and secured Sloo's deed of assignment.

Goodman brings suit to enforce his judgment and have the same discharged out of the government funds collected by Niblack. In delivering the opinion of the court upon appeal, Mr. Justice Miller refers to *United States v. Gillis*; *Spofford l. Kirk*, and *Erwin v. United States*.

In distinguishing this case from *Spofford v. Kirk*, the court said:

201 “That was a case of the transfer or assignment of a part of a disputed claim, then in controversy, and it was clearly within all the mischiefs designed to be remedied by these statutes.

Those mischiefs, as laid down in that opinion, and in the others referred to, were mainly two:

"First. The danger that the rights of the Government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction.

"Second. That, by the transfer of such a claim against the Government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claims before the departments, the courts, or the Congress, as desperate cases when the reward is contingent on success, so often suggested.

"Both these considerations, as well as a careful examination of the statute, leave no doubt that its sole purpose was the protection of the Government, and not that of the parties to the assignment."

Following the lead of *Erwin v. United States*, the court then held that there was practically no difference between the voluntary assignment by an insolvent debtor of all his effects for the benefit of his creditors, and an assignment in bankruptcy; and that such an assignment was not within the mischiefs prohibited by the statute.

It is to be observed, however, that in this case Sloo had assigned his contract with the Government to Roberts, Law & McIlvaine, prior to his deed of general assignment; and that said original assignment of contract had been recognized by an act of Congress. The court said:

"The first agreement of Sloo, therefore, is unassailable.

"His assignment to Cheever and Wiles, in 1860, conveyed only his interest in the profits in the contract which the parties in the first assignment were performing or had performed for the Government.

"The general assignment of Sloo, in 1860, gave Cheever and Wiles no right to assert a claim against the Government. They could only deal with the trustees under the first assignment, and on them they had only the claim for net profits which came into their hands.

202 Cheever and Wiles and the person complaining were neither of them capable of suing the United States in the Court of Claims, or of presenting the matter before the accounting officers of the Government, and could give no valid or just acquittance to the Government for any part of the claim.

"We do not think the transfer of Cheever and Wiles, as trustees for Sloo's creditors is forbidden by the act of 1853, or by any other principle of law or of public policy."

7. *Bailey v. United States*, 109 U. S., 437. By decree of March 25, 1868, in the District Court of the United States for the Southern District of New York, certain sums of money were ascertained to be due on account of the illegal capture of the British steamer "Lebuan" and her cargo by a cruiser of the United States.

On February 6, 1869, Bailey and other owners of "Labuan" executed a power of attorney to Godeffroy for the collection of said moneys.

On July 7, 1870, Congress made an appropriation to pay said claims, due under said decree.

Godeffroy collected the first draft under the warrant, and failed to account for same.

Bailey then sued the United States, claiming that his power of attorney to Godeffroy was absolutely null and void, and that the Government should repay him.

Held that the payment was good as between the parties, and that the Government was protected thereby.

Referring to *Erwin v. United States* and *Goodman v. Niblack*, Mr. Justice Harlan said:

"These cases show that the statutes in question are not to be interpreted according to the literal acceptance of the words used."

And he then clearly points out the character of the principal case in the following language:

"In the case before us no question arises as to the transfer or assignment of a claim against the Government. The question is whether payment to one, who has been authorized to receive it, by the power of attorney executed before the allowance of the claim by the act of Congress, was good as between the Government and the claimant, where, at the time of payment, such power of attorney was unrevoked."

203 He then points out how inconsistent it would be to construe a statute passed for the protection of the Government into an act for its injury, by compelling "a second payment after the amount thereof has been paid to the person authorized by the claimant to receive it." He declared that an unexecuted power of attorney given before the warrant was issued might be treated as a nullity by the party, and might be so regarded by the government officers. "But if those officers chose to make payment to the person whom the claimant, by formal power of attorney, has accredited to them as authorized to receive payment, the claimant cannot be permitted to make his own disregard of the statute the basis for impeaching the settlement had with his agent. To hold otherwise would be inconsistent with the ruling heretofore made—and with which, upon consideration we are entirely satisfied—that the purpose of Congress, by the enactments in question, was to protect the Government against frauds on the part of claimants and those who might become interested with them in the prosecution of claims, whether before Congress, or the several departments."

8. *Bemiss v. Taylor*, 110 U. S., 42. The widow Bemiss employs Taylor as counsel to prosecute a claim against the United States pending before the Southern Claims Commission under the act of March 3, 1871. Taylor recovers and is paid his 50% contingent fee. Subsequently the Bemiss minors, with the connivance of the widow

Bemiss, sue for a return of the money paid Taylor, first because the widow has no right to contract with him and, second, because the contract for 50% was unconscionable and should be set aside. But the court upheld the contract.

This case was cited by counsel for the First National Bank, but attention is called to the fact that no allusion whatever is made to 3477 in the opinion of the court. The case appears to have been decided wholly under the act of March 3, 1871.

9. *St. Paul & Duluth R. R. Co. v. United States*, 112 U. S., 733. The question in this case was whether the purchaser of a railroad under a mortgage of its properties, rights, and franchises became entitled to the claims on the part of the mortgagor against the United States for the carriage of mails. It was held that such claims did not pass under the mortgage, and that any assignment thereof was prohibited by 3477.

204 This decision was summarized in the later case of *Price v. Forest* as follows, the court saying:

"Nothing more was adjudged in that case than that a voluntary transfer by way of mortgage of a claim against the United States for the security of a debt, and finally completed and made absolute by a judicial sale, was within the purview of the prohibition contained in 3477, and could not be made the basis of an action against the Government in the Court of Claims. Such a voluntary assignment to secure a specific debt was held to be within the mischief which that section was intended to remedy." (*Price v. Forrest*, 173 U. S., 420-422.)

10. *Hobbs v. McLean*, 117 U. S., 567. The question in this case was whether articles of copartnership entered into in view of a contract with the Government, and made before the government contract was signed, constituted such an assignment of a claim against the Government as is prohibited by 3477 and 3737.

The court pointed out the fact that when the articles of copartnership were signed there was no claim against the United States to be transferred, because the government contract had not then been made.

"Section 3477, it is clear, only refers to claims against the United States which can be presented by the claimant to some department or officer of the United States for payment, or may be prosecuted in the Court of Claims. The section merely forbids the assignment of such claims before their allowance, the ascertainment of the amount due thereon, and the issue of a warrant for their payment. When the contract of partnership was made, Peck had no claim which he could present for payment or on which he could have brought suit. He therefore had no claim, the assignment of which the statute forbids. It is so clear that the articles of partnership do not constitute such an assignment as is forbidden by the section under consideration, that it would be a waste of words further to discuss the point * * *

We are of opinion that the partnership contract was not opposed to the policy of the statute. The sections under consideration were passed for the protection of the Government. (*Goodman v. Niblack*,

102 U. S., 556.) They were passed in order that the Government might not be harassed by multiplying the number of persons with whom it had to deal, and always might know with whom it was dealing until the contract was completed and a statement made. Their purpose was not to dictate to the contractor what he should do with the money received on his contract after the contract had been performed."

10. *Freedman's Saving Bank v. Shepherd*, 127 U. S., 494. June 6, 1873, A. C. Bradley leased a lot and building for a post-office to Postmaster-General of the United States.

June 9, 1873, *Freedman's Savings Bank* conveyed said lot to Bradley. June 9, 1873, Bradley secured the deferred payment for the lot by deed of trust on same. August 27, 1874, Bradley sells the lot to A. R. Shepherd and assigns the lease, having really represented Shepherd in the original purchase, and Shepherd having verbally assumed to make the deferred payments. November 21, 1874, notice of sale to Shepherd is given to Postmaster-General. November 15, 1876, Shepherd conveys the lot to Taylor, Bacon and Cross, trustee, to secure \$200,000.00. June 21, 1877, Bradley and Shepherd make written pledge of rents to John W. Thompson for payment of a debt secured to him by deed of trust executed by Shepherd on March 10, 1873.

United States Government gave two drafts for rents—one for \$1,800.00 and one for \$3,475.00 payable to the order of A. C. Bradley, to use of A. R. Shepherd, to use of Taylor, Bacon and Cross, trustees.

Held, that as between the rival creditors of assignor a claim for rent due by United States is not such a claim as that the assignment thereof is void under 3477, Revised Statutes of the United States, where the assignment has been recognized by the Government, and no further claim on account thereof may be asserted by any one against the Government. The court said:

"But when the Government ascertained the amount of rent due under Bradley's lease, and, with his consent, allowed the same to him for the use of Shepherd, for the use of Taylor, Bacon and Cross, trustees, we perceive nothing in the words or policies of the statute to prevent Thompson from asserting his rights either against the parties or any of them named in the warrants issued by the Government or against the trust company, the mortgagee of the premises."

206 11. *Butler v. Goreley*, 146 U. S., 303. This was a contest between an assignor in insolvency under the laws of Massachusetts and the administratrix of the assignor, over a warrant issued by the United States Government in the name of the assignor before his death.

Here, it will be observed the amount due by the Government had been actually ascertained and a warrant issued therefor, and the contest was one out of which no further claim could possibly arise against the Government.

Following *Erwin v. United States* and *Goodman v. Niblack*, it was held that the assignment in question was not within the prohibition of 3477. The facts in this case were as follows:

June 14, 1863, Taylor was captured on the United States bark "Good Hope" by the Confederate cruiser "Alabama," and his personal effects were burnt with the bark.

June 5, 1882, Congress passes an act for the payment of the "Alabama claims."

January 13, 1883, Taylor files claim against United States under said act.

June 20, 1883, Taylor files voluntary petition in insolvency under the laws of Massachusetts.

February 20, 1885, Government warrant issued to Taylor in satisfaction of claim.

February 24, 1885, Taylor dies before drawing warrant.

March 31, 1885, Taylor's widow is appointed administratrix.

April 4, 1885, Taylor's administratrix executes power of attorney to Benjamin F. Butler, of Boston, for collection of said warrant.

April 6, 1885, Butler collects the warrant from the United States and distributes some of the proceeds, having previously been notified in person of the claim to same by Goreley, Taylor's assignor in insolvency, under deed of January 13, 1883.

The state courts of Massachusetts held that Goreley, the assignor in insolvency, was entitled to recover from Butler; and this judgment was affirmed on appeal to the Supreme Court of the United States.

12. *Hager v. Swayne*, 149 U. S., 242. This was a case of an assignment of a claim for the return of duties illegally exacted by the collector of the port of San Francisco; and it was held that, though the assignor might have recovered, an assignee of claims for excessive duties could not sue for the same.

In referring to 3477, Mr. Chief Justice Fuller said:

"The language is general which declares the nullity of such assignments, and the only cases where they are recognized is where a warrant has already issued. If there are any cases where the claim cannot be paid by warrant, then they do not come within the exception, but are affected by the general language. 16 Ops. Atty. Gen. 261.

"The mischiefs designed to be remedied by this section were declared by Mr. Justice Miller, in *Goodman v. Niblack*, 102 U. S., 556, to be mainly two:

"First. The danger that the right of the Government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction.

"Second. That by a transfer of such claim against the Government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the departments, the courts, or the Congress,

as desperate cases, where the award is contingent on success so often suggest.

"It has been frequently held that the section does not include transfers by operation of law, or by will, in bankruptcy, or insolvency. *Butler v. Goreley*, 146 U. S., 303, and cases cited. But the legislation shows that the intent of Congress was that the assignment of naked claims against the Government for the purposes of suit, or in view of litigation or otherwise, should not be countenanced."

13. *Ball v. Halsell*, 161 U. S., 72. In this case it was held that the voluntary transfer of part of a claim against the United States for depredations of Indians, was contrary to the statute. It was a case for the recovery of a contingent fee for the successful prosecution of a claim against the Government. In discussing the statute under consideration, Mr. Justice Gray said:

"At the first term of this court after the passage of the act 208 of 1853, it was said by this court, speaking by Mr. Justice Grier, that 'this act annuls all champetuous contracts with agents or private claims.' *Marshall v. B. & O. Railroad Company*, 16 How., 314-336. And the act has since been held by this court to include all specific assignments, in whatever form, of any claim against the United States under a statute or treaty, whether to be presented to one of the executive departments, or to be prosecuted in the Court of Claims; and to make every such assignment void, unless it has been assented to by the United States. *United States v. Gillis*, 95 U. S., 407; *Spofford v. Kirk*, 97 U. S., 484; *St. Paul & Duluth R. R. Co. v. United States*, 112 U. S., 733; *Hager v. Swayne*, 149 U. S., 242-247."

In discussing *Spofford v. Kirk*, the learned justice said:

"That decision has never been overruled or questioned by the court, although the act has been held not to apply to general assignments made by a debtor of all his property for the benefit of his creditors, whether under a bankruptcy or insolvent law, or otherwise." (Citing *Erwin v. United States*; *Goodman v. Niblack*; *Butler v. Goreley*; and citing *Bailey v. United States*; *Hobbs v. McLean*, and *Freedman's S. & T. Company v. Shepherd* for illustrations of other cases in which the act has been held inapplicable.)

14. *Prairie State National Bank v. United States*, 164 U. S., 227. The real contestants in this case, as was stated by the court, were the bank and Charles A. Hitchcock, the latter being surety for Sundberg and Company, who had a contract to build the United States custom house at Galveston, Texas. The contractors failed and Hitchcock completed the building. But the bank had advanced \$6,000.00 to the contractors to be returned out of the last payment, which the Government had the right to reserve until the completion and acceptance of the building. The question was whether this reserved payment should be turned over to Hitchcock, who had completed the building, or to the bank, who claimed it under its assignment for cash advanced to enable the contractors to proceed with the building before his failure.

Mr. Justice White, who delivered the opinion of the court, disposed of the bank's claim under its assignment in a single sentence, as follows:

209 "The question to be determined is, which of the two contestants possesses a superior right to the fund? It is self-evident that, considering the agreement between Sundberg and Company and the bank as an intended transfer pro tanto of the rights of the latter to the results of the contract with the United States, such transfer would be void under United States Revised Statutes 3477."

This position, says the justice, was not controverted in the discussion at bar, but counsel for the bank endeavored to sustain its claim upon the ground that it had acquired an equitable lien upon the reserve by the advances made for the prosecution of the building.

The court held that Hitchcock was subrogated to the rights of the United States in the reserve fund, but that there was nothing in the bank's claim to an equitable lien upon that fund.

The position of the bank was described as follows:

"The bank, on the contrary, was a mere volunteer, who lent money to Sundberg on the faith of a personal agreement and of supposed rights acquired thereon."

15. *Conde v. York*, 168 U. S., 647. This was an appeal from the New York Court of Appeals. The case is reported in the State Reports as *York v. Conde*, 147 N. Y., 486, and these were the facts:

Witherby and Gaffney were contractors for the United States barracks. York and Starkweather furnished lumber therefor.

March 27, 1890, Witherby and Gaffney made written assignments of \$3,000.00 to York and Starkweather of government moneys.

May 15, 1890, Witherby and Gaffney delivered government draft for \$4,000.00 to Conde, another creditor.

York notified Conde of his assignment of March 27, 1890.

Conde then claimed that a verbal assignment had been made to him prior to March 27, 1890.

In the trial of the case the jury decided against Conde's claim under the alleged verbal assignment. Conde then claimed that the written assignment to York and Starkweather was void under 3477 of the Revised Statutes of United States.

210 And the New York Court of Appeals held that York's assignment was not void between the parties, and upon appeal to the Supreme Court of the United States the writ of error was dismissed on the ground that this court had no jurisdiction to review the judgment of the state court, as no federal question had been raised in the principal case above cited.

After quoting from the opinion of the state court, Mr. Chief Justice Fuller said:

"Many decisions of this court in respect to 3477 were then considered, and the conclusion reached that the section had been so construed as to permit transfers made in the legitimate course of business, in good faith, to secure an honest debt, while they might be

disregarded by the Government, to be sustained as between the parties so far as to enable transferees, after the Government had paid over the money to its contractors, to enforce them against the latter or those taking with notice. The court held, in effect, that such was the transaction in the case at bar. * * * The United States had, in due course, paid over the money to the contractors, and between them there was no dispute."

It is to be observed that this was a contest between rival creditors begun over a fund after it had been actually paid by the Government to the original contractor by warrant.

16. *Price v. Forrest*, 173 U. S., 410. This case decides, in effect, that an ascertained claim against the Government may be subject to judgment against the claimant, and that a state court may in a proper chancery proceeding appoint a receiver to collect the amount unpaid on the claim from the Government and dispose of the same in accordance with law.

The material facts were as follows:

January 14, 1850, Price, retired purser and fiscal agent of United States, advanced \$75,000.00 to his successor, for public uses. This money not being returned, Price asserted a claim against the Government.

In 1857 Forrest gets judgment against Price. In 1874 Forrest's widow brings suit to enforce judgment. In 1891 Congress passes act for the relief of Price. In 1892 \$76,204.08 is awarded him. A portion of this money is actually paid, and Forrest's widow then gets a decree requiring Price to deliver government drafts for the balance to a receiver. In consequence of this suit, the government
211 officials hold back enough to satisfy the judgment of Forrest against Price, pending the litigation in the state courts. The state court held that it had "jurisdiction under the laws of the State, and as between the parties before it, to put into the hands of its receiver any chose in action of whatever nature belonging to Price and of which he had possession or control."

Mr. Justice Harlan, reviewing the federal authorities, declared that the doctrine in *United States v. Gillis*, *Erwin v. United States*, and *Goodman v. Niblack* had not been modified by any subsequent decision, and was not inconsistent with *St. Paul and Duluth Railroad Company v. United States* and *Ball v. Halsell*. He declared that the principle announced in *Erwin v. United States* and *Goodman v. Niblack* justified the conclusion reached by the state court, and then said:

"As this court has said, the object of Congress by 3477 was to protect the Government, and not the claimant, and to prevent frauds upon the Treasury. There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors. We perceive nothing in the words or object of the statute that prevents any court of competent jurisdiction as to subject-matter and parties from making such orders as may be necessary or appropriate to prevent one who has a claim for money

against the Government from withdrawing the proceeds of such claim from the reach of his creditors; provided, such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the Government nor in anywise obstruct any action such officers may legally take under the statutes relating to the payment of claims against the United States."

The learned justice then went on to say that if a court should require a claim to be collected through a receiver, for the protection of a creditor, "we are unable to say that such action would be inconsistent with 3477." Yet it was announced in the next breath that the Government's officers might not be required to recognize a receiver and might "refuse to make payment except as provided in 3477."

17. *Hoffeld v. United States*, 186 U. S., 273. This was a case which was cited by counsel, but arose under an act of June 16, 1886, and had nothing to do with 3477. The court simply refers to *Erwin v. United States* and *Goodman v. Niblack* to illustrate and support the doctrine that assignments by operation of law and general assignments in insolvency differ from ordinary voluntary assignments prohibited by statute.

CASES DECIDED IN UNITED STATES CIRCUIT COURT OF APPEALS.

1. *Coates v. United States*, 53 Fed. Rep., 989. Ramsey & Son, shipbuilders, assigned by power of attorney to Coates & Co. \$6,000.00 of the last payments to become due to them under the government contract. The assignment was assented to by the naval secretary, and Coates & Co. were advised by him to deliver materials upon the understanding that a warrant would be made out to Ramsey and Son and endorsed to Coates & Co., but the contract with Ramsey and Son was forfeited, and the Government completed the ship. Hence Ramsey and Son never earned the last payment under their contract and the warrant therefor was never issued to them. But the ship was completed by the Government for \$726.10 less than the contract price, and it was held that the Government should pay said \$726.10 to Coates & Company.

Goff and Simonton, JJ., concurred in the above opinion; Hughes, J., thought the Government should be held liable to Coates and Company for the whole \$6,000.00 assigned to them. This was not a case of contest between rival creditors.

2. *Greenville Savings Bank v. Lawrence*, 76 Fed. Rep., 545. Lawrence borrowed money from the bank to pay for the labor and materials used in building the United States court-house and post-office at Greenville, South Carolina. Checks were sent by the Government to the bank, payable to the order of Lawrence. Finally, on November 6, 1891, Lawrence assigned to the bank the balance to become due on the completion of the building. This assignment order was accepted by the government agent and endorsed by him, "Accepted. Frank Nichols, disbursing agent."

Held, that this and other assignments were void as to unpaid claims due for labor and supplies, both under sections 3477 and 3737 and under the provisions of the contract with Lawrence permitting the Government to withhold payments until all labor and supply claims were satisfied.

213 Judges Goff, Hughes, and Morris sat in this case and the decision of the court was unanimous.

3. *Dulaney v. Scudder*, 94 Fed. Rep., 6. Dulaney had a government contract for the construction of levees. He assigned the contract to Scudder and Company, who advanced the necessary money and actually did the work. The court said:

"The record shows that Dulaney was insolvent when he made the contract with the Government, and that he contracted with Scudder and Company to obtain the advances before he had performed any work on his contract. When he made the contract of March 31, 1894, and executed the power of attorney, he had no claim against the Government. He had done no work."

Hence under the authority of *Hobbs v. McLean*, 117 U. S., 576, the court held:

"The arrangement, therefore, made by Dulaney with Scudder and Company to obtain the means to carry out the former's contract with the Government was not the transfer of a claim within the meaning of 3477, and does not violate the letter or spirit of that section."

DECISIONS OF THE UNITED STATES COURT OF CLAIMS.

1. *Burke's case*, 13 Ct. Cl., 231. The provisions of 3477 are of universal application, and cover all claims against the United States in every tribunal in which they may be asserted.

2. *Belt's case*, 15 Ct. Cl., 92. All assignments of claims against the United States made before the issuing of warrants for their payment are absolutely void, not only as against the Government, but as between the assignors and the assignees themselves.

3. *Lopez v. United States*, 24 Ct. Cl., 84. If the officers of the Government choose to make payment to an assignee under a former power of attorney, the assignor is estopped from pleading the statute and impeaching the settlement.

214 4. *Hitchcock v. United States*, 27 Court of Claims, 185. It is well settled that no officer of the Government can do any act which will relieve assignments and powers of attorney from the operation of 3477.

Memo.—The reports of the Court of Claims cited above are not in the law library, and my references to them have been taken from annotations to the Revised Statutes of the United States.

DECISIONS OF STATE COURTS.

1. *York v. Conde*, 147 N. Y., 486. This case has already been fully discussed in connection with the appeal to the Supreme Court of the United States. *Conde v. York*, 166 U. S., 647.

2. In the matter of Hone, 153 New York, 526. Lighthouse had a contract with the United States Government on the manufacture of mail bags.

September 11, 1894, Lighthouse assigned his contract to Swanson and Acker. They took charge of the factory, and paid Lighthouse \$30.00 per week to run it. A bill of sale was made, but not filed.

March 5, 1895, a second bill of sale was made and recorded. May 13, 1895, Hone was appointed receiver of the assets of Lighthouse in a suit brought to enforce four judgments recovered (1) November 15, 1887; (2) May 1, 1895; (3) March 13, 1895, and (4) August 6, 1895.

September 12, 1895, the Government sent a draft for \$1,920.00 to the receiver, who paid these judgments without any order of court authorizing him to do so and with notice of the bill of sale to Swanson and Acker.

In the progress of the suit it was held that none of the judgments had become a lien upon any of the property transferred to the receiver under the laws of New York, and that the assignment to Swanson and Acker was valid between the parties.

In referring to this assignment the court said: "While the Government might disregard it, yet it was good between the parties and vested the assignees with the right to receive the money payable under it as against Lighthouse or any of his other creditors (York v. Conde, 147 N. Y., 486)."

Hence the receiver was required to pay the assignees out of his own pocket.

215 It is to be observed that this was a contest over funds that had been actually paid by the Government, upon an ascertained claim, upon which a warrant had issued.

The court distinctly says the assignment was not binding on the Government; and it was a case in which the Government could not be affected by the decision of the court.

3. *Jernegan v. Osborne*, 155 Mass., 207. The facts in this case were as follows:

August 17, 1872, loss sustained by ship "Europa" in rescuing 900 U. S. seamen in the Arctic seas.

August 28, 1872, Jernegan sold to Osborne all his interest in "Europa."

May 22, 1874, Jernegan sold to Osborne his claim against United States Government for above loss.

February 20, 1891, United States Government paid \$33,889.16 for said loss to Osborne. Thereupon Jernegan brought a suit against Osborne, claiming (1) that his sale did not cover this recovery; (2) that said sale was void under 3477 Revised Statutes U. S.

The court held against Jernegan on both of these points, stating that the case was not within the mischief pointed out in *Goodman v. Niblack*, and saying: "The Government has paid over the money without objection to Osborne, as agent and managing owner of the

'Europa';" also saying, "It is very doubtful whether this claim came within the provisions of 3477."

ANALYSIS OF AUTHORITIES.

Analysis of the above authorities shows that:

First. Assignments of claims against the Government have been held void under 3477 of the Revised Statutes of the United States in the following cases:

- (1) *Burke v. Child*, 88 U. S., 441, ante, p. 4.
- (2) *U. S. v. Gillis*, 95 U. S., 407, ante, p. 5.
- (3) *Spofford v. Kirk*, 97 U. S., 484, ante, p. 5.
- (4) *McKnight v. U. S.*, 98 U. S., 179, ante, p. 6.
- (5) *St. P. & D. R. R. v. U. S.*, 112 U. S., 733, ante, p. 9.
- (6) *Hagar v. Swayne*, 149 U. S., 242, ante, p. 13.
- (7) *Ball v. Halsell*, 161 U. S., 72, ante, p. 13.
- (8) *Prairie St. Nat'l Bank v. U. S.*, 164 U. S., 227 (p. 14).
- 216 (9) *Greenville Savings Bank v. Lawrence*, 76 Fed. Rep., 545, ante p. 18.
- (10) *Burke's case*, 13 Ct. Claims, 231, ante p. 19.
- (11) *Belt's case*, 15 Ct. Claims, 92, ante p. 19.
- (12) *Hitchcock v. U. S.*, 27 Court Claims, 185, ante p. 19.

Second. Assignments of claims against the Government have been sustained in the following cases:

1. Bankruptcy and insolvency assignments for the benefit of all creditors:

- (i) *Erwin v. U. S.*, 97 U. S., 392, ante p. 5.
- (ii) *Goodman v. Niblack*, 102 U. S., 556, ante p. 6.
- (iii) *Butler v. Goreley*, 146 U. S., 303, ante p. 11.

2. Partnership articles and assignments made before work is begun under government contract:

- (i) *Hobbs v. McLean*, 117 U. S., 567, ante p. 10.
- (ii) *Dulaney v. Scudder*, 94 Fed. Rep., 6, ante p. 18.

3. Ascertained claims, either actually paid by the Government or held pending litigation as follows:

- (i) *Bailey v. United States*, 109 U. S., 437, ante p. 8.
- (ii) *Bemiss v. Taylor*, 110 U. S., 42, ante p. 9.
- (iii) *Freedman's Savings Bank v. Shepherd*, 127 U. S., 494, ante page 11.
- (iv) *Price v. Forrest*, 173 U. S., 410, ante p. 16.
- (v) *Conde v. York*, 168 U. S., 647, ante p. 15.
- (vi) *In the matter of Hone*, 153 N. Y., 526, ante p. 20.
- (vii) *Jernegan v. Osborne*, 155 Mass., 207, ante p. 20.

These three classes of cases are the only exceptions to the operation of the statute, and in order to determine whether any of the assignments made by the William R. Trigg Company falls within any of these exceptions we must consider the facts in each case.

In addition to the above authorities as a general guide in the interpretation of the statute in question, it may be well to bear in

mind some of the utterances of our own court of last resort. It was said by Judge Moncure:

“In the exposition of a statute the leading clue to the construction to be made is the intention of the legislator; and that may be discovered from different signs. As a primary rule, it is to be collected from the words; when the words are not explicit, it is to be gathered from the occasion and necessity of the law, being the causes which moved the legislature to enact it.” Fox’s Administrator v. Commonwealth, 16 Gratt., p. 9.

In a later case it has been said:

“When a law is plain and unambiguous, whether expressed in general or limited terms, the legislature shall be intended to mean what they have plainly expressed, and no room is left for construction.” Johnson v. Mann, 77 Va., p. 265.

And in a still later case it has been said:

“In the construction of statutes, it is said that it is not permitted to interpret what has no need of interpretation. When it is expressed in clear and precise terms—when the sense is manifest, and leads to nothing absurd—there can be no reason not to adopt the sense which it naturally presents. To go elsewhere in search of conjectures in order to restrain or extinguish it, is to elude it. And the popular, received import of words furnishes the general rule for the interpretation of public laws. * * * The intention of the legislature is to be found from the act itself, from other acts in *pari materia*, and sometimes from the cause or necessity of the act; and, when the intent can be discovered, it should be followed with reason and discretion, though such construction seems contrary to the letter where the words are obscure; and every part of it should be viewed in connection with the whole, so as to make all of its parts harmonize if practicable, and give a sensible and intelligent effect to each.” Postal Co. v. N. & W. R. R. Co., 88 Va., 920, 925-6.

(A.) The assignments of the “loss claims.”

These “loss claims” are claims against the United States Government for losses sustained by the company in the construction of the torpedo boats “Shubrick,” “Stockton,” and “Thornton,” and the torpedo boat destroyers “Decatur” and “Dale,” under contracts with the Government under the act of Congress approved May 4, 1898.

The William R. Trigg Company was one of eleven (11) successful bidders, and in common with every other contractor lost heavily under its contract. All the boats were completed by the contractors at a heavy loss, and accepted by the Government; and there were circumstances attending the execution of the contracts that seemed to entitle the contractors to some relief from the losses sustained by each one of them. They therefore combined in presenting their claims to the Government, asking reimbursement to the extent of at least one-half of their actual losses. The matter was investigated by the Navy Department, and Secretary Long expressed the

opinion that the claimants were entitled to "equitable consideration." Certain bills were introduced in Congress for the relief of the contractors, and the William R. Trigg Company was hopeful that its claim might become a valuable asset. The losses of the Trigg Company under these contracts were \$666,472.69, and under the bills aforesaid, if passed by Congress as drawn, it would be repaid \$493,452.80 of this amount. The circumstances under which the first assignment of these "loss claims" was made by the William R. Trigg Company on October 10, 1902, are stated as follows on page 504 of the depositions by Mr. Lilburn T. Myers, formerly vice-president of the William R. Trigg Company, and now receiver in this cause. Mr. Meyers read from the minutes of the board of directors of the company as follows:

"The vice-president stated that about \$150,000.00 would be needed by the company to meet its necessary expenses within the next thirty days, and that about \$12,000.00 only could be realized from the sale of the bonds yet remaining unsold; and thereupon Mr. Robert S. Boshier agreed to lend the company the sum of \$20,246.00, Mr. James N. Boyd agreed to lend the company the sum of \$20,246.00, Mr. Thomas Atkinson agreed to lend the company the sum of \$20,246.00, Mr. S. D. Crenshaw agreed to lend the company the sum of \$11,705.00, and Mr. J. J. Montague agreed to lend the company the sum of \$10,630.00; and Mr. H. M. Flagler agreed to lend the company the sum of \$41,625.00, or to endorse the company's notes for its accommodation for the sum of \$41,625.00; said loans and endorsements to be made as and when called for by the company, but not to exceed in the aggregate the sums above mentioned, and said loans to be made upon condition that the Trigg Company execute its notes therefor, and execute an assignment to the Virginia Trust Company, trustee, for the purpose of securing said debts, 219 of all its claim against the United States Government growing out of or on account of the losses sustained by the Trigg Company upon its contract with the United States Government for the construction of the United States torpedo boats "Shubrick," "Stockton," and "Thornton," and the torpedo-boat destroyers "Decatur" and "Dale," which claim has been established by the report of the board appointed by the Secretary of the Navy, of which Rear Admiral Ramsey is president, and which claim amounts to about \$256,000.00, arrived at by taking one-half of the difference between the contract prices for the said boats and the prices fixed by said board as proper actual cost, excluding all profit; and thereupon, on motion, it was unanimously resolved that the president, vice-president, or second vice-president execute said assignment of said claim to the Virginia Trust Company, trustee, for said purpose."

Three subsequent assignments were made under similar circumstances in a similar manner on November 17, 1902, on November 19, 1902, and on November 25, 1902.

The claims under said assignments are as follows:

(1) Claim of R. S. Bosher's estate, principal-----	\$35,746.00
represented by 5 negotiable notes of the William R. Trigg Company, payable on demand:	
Note dated October 14, 1902, for-----	\$7,996.00
Note dated October 28, 1902, for-----	12,250.00
Note dated November 7, 1902, for-----	5,000.00
Note dated November 19, 1902, for-----	7,500.00
Note dated November 25, 1902, for-----	3,000.00
(2) The claim of James N. Boyd, principal-----	35,746.00
represented by 5 negotiable notes of the William R. Trigg Company, payable on demand, to wit:	
Note dated October 10, 1902, for-----	\$7,996.00
Note dated October 23, 1902, for-----	12,250.00
Note dated November 17, 1902, for-----	5,000.00
Note dated November 25, 1902, for-----	3,000.00
Note dated November 19, 1902, for-----	7,500.00
(3) The claim of Thomas Atkinson, principal-----	35,746.00
represented by 6 negotiable notes of the William R. Trigg Company, payable on demand, to wit:	
Note dated October 10, 1902, for-----	\$5,651.00
Note dated October 23, 1902, for-----	12,250.00
Note dated November 4, 1902, for-----	2,345.00
Note dated November 17, 1902, for-----	5,000.00
Note dated November 19, 1902, for-----	7,500.00
Note dated November 25, 1902, for-----	3,000.00
(4) The claim of S. D. Crenshaw, principal-----	20,385.00
represented by 5 negotiable notes of the William R. Trigg Company, payable on demand, to wit:	
Note dated October 24, 1902, for-----	\$4,705.00
Note dated October 28, 1902, for-----	7,000.00
Note dated November 17, 1902, for-----	2,800.00
Note dated November 19, 1902, for-----	4,200.00
Note dated November 25, 1902, for-----	1,680.00
(5) The claim of J. J. Montague, principal-----	17,450.00
represented by 5 negotiable notes of the William R. Trigg Company, payable on demand, to wit:	
Note dated October 14, 1902, for-----	\$4,330.00
Note dated November 4, 1902, for-----	6,300.00
Note dated November 17, 1902, for-----	2,200.00
Note dated November 19, 1902, for-----	3,300.00
Note dated November 29, 1902, for-----	1,320.00
(6) The claim of H. M. Flagler, principal-----	41,625.00
represented by notes of the William R. Trigg Company, pay- able four (4) months after date, to wit:	
Note dated October 14, 1902, for-----	\$16,625.00
Note dated October 23, 1902, for-----	25,000.00

The principal due under said assignments is therefore----- 186,698.00

It is observed that the claims covered by these assignments are not based upon any failure on the part of the Government to fulfill its part of the contracts under which the losses were sustained.

221 The William R. Trigg Company has no cause of action against the Government, but it is simply endeavoring to make out a case for "equitable relief" from Congress. Its claim is nothing more than an appeal to the magnanimity and generosity of the Government; and if anything at all is ever recovered it will be solely by the gracious act of Congress. The amounts of the claims cannot even be termed "unliquidated damages," because no legal damage has been sustained by the contractors under the contracts. It is

simply a loss under an improvident contract, a case of *damnum absque injuria* so far as the Government is concerned.

It seems to the commissioner that this is peculiarly a case in which the Government needs absolute protection against the importunities of assignees. The claim can only be established by the passage of a special act of Congress. The assignment of such claims might bring into play all sorts of influences and exertions for the passage of the act without reference to its merits, for the benefit of the pecuniary interests of the assignee and without regard for the welfare of the Government. The case of *Burke v. Child* involved the assignment of the claim of Nicholas P. Trist against the United States for his services touching the treaty of Guadalupe Hidalgo. The report does not show what those services were, but it does show that he delayed nearly twenty (20) years before concluding to submit his case to Congress, and the inference is that his claim was one that could not have been recovered by litigation. It required a special act, as this does, and he made a contract with Linus Child that Child should take charge of the claim and prosecute it as his agent and attorney for 25% of whatever sum Congress might allow. The claim was subsequently paid by Congress, after the death of both Trist and Child, and Child's son brought a suit against Trist's executor for the recovery of 25% of the amount allowed. In discussing the assignment the court said:

"A private bill is apt to attract little attention. It involves no great public interest, and usually fails to excite much discussion. Not infrequently the facts are whispered to those whose duty it is to investigate, vouched for by them, and the passage of the measure is thus secured. If the agent is truthful and conceals nothing, all is well. If he uses nefarious means with success, the spring head and the stream of legislation are polluted. To legalize the traffic of such service would open a door at which fraud and falsehood
222 would not fail to enter and make themselves felt at every accessible point. It would invite their presence and offer them a premium." *Burke v. Child*, 88 U. S., p. 441.

If the assignment of a 25% interest in a claim against the Government is subject to these criticisms, the assignment of the whole claim must be mathematically and practically much more objectionable. It was said by Mr. Justice Harlan:

"As this court has said, the object of Congress by section 3477 was to protect the Government, and not the claimant, and to prevent frauds upon the Treasury." *Price v. Forrest*, 173 U. S., page 410.

It seems to the commissioner that there might be great risk of frauds upon the Treasury, if the statute were held not to include claims like those under discussion. In *United States v. Gillis*, the court said that the statute expressly embraces "every claim against the United States, however arising, of whatever nature it may be, and wherever or whenever presented;" and that the act "is of universal application, and covers all claims against the United States, in every tribunal in which they may be asserted." (*U. S. v. Gillis*,

95 U. S., p. 407.) In *Bailey v. United States*, Mr. Justice Harlan declares "that the purpose of Congress by the enactments in question was to protect the Government against frauds on the part of claimants and those who might become interested with them in the prosecution of claims, whether before Congress or the several departments." (109 U. S., p. 437.)

In *Hager against Swayne*, after setting forth the two leading mischiefs designed to be remedied, the court said:

"But the legislation shows that the intent of Congress was that the assignment of naked claims against the Government for the purposes of suit, or in view of litigation or otherwise, should not be countenanced." (149 U. S., p. 242.)

The commissioner is of opinion that the assignment of such a claim against the Government is clearly within the prohibitions of 3477 of the Revised Statutes of the United States, and therefore absolutely null and void. There is nothing in the case to bring it within any of the exceptions to the operation of the statute, but, on

223 the contrary, it seems to fall distinctly within the mischiefs "designed to be remedied by this statute." For if such assignments be upheld, without intending to cast and personal reflection upon any one of the assignees, it may be said in the language of the Supreme Court of the United States, there is:

"First. The danger that the rights of the Government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction.

"Second. That, by the transfer of such a claim against the Government to one or more persons not originally interested in it, the way might be conveniently open to such improper influences in prosecuting the claims before the departments, the courts, or the Congress, as desperate cases, where the reward is contingent on success, so often suggest." (*Goodman v. Niblack*, 102 U. S., 556; *Hager v. Swayne*, 149 U. S., 242.)

(B.) The assignments of "reserved claims."

There were three assignments of what are known as the "reserved claims" of the William R. Trigg Company under its contracts with the United States Government: One to the First National Bank of Richmond, one to the Virginia Trust Company, and one to the Savings Bank of Richmond. The facts in each of these cases will first be stated, and then the validity of the assignments will be determined.

I.

The reserved claim of the Mohawk, assigned to the First National Bank of Richmond.

1. The "reserved claim" on the "Mohawk" assigned to the First National Bank of Richmond.

The facts concerning this claim and its assignment are as follows:

On April 20, 1900, the William R. Trigg Company contracted with the United States Government for the construction of revenue cutters Nos. 7 and 8, known as the "Tuscarora" and the "Moosehawk." Certain payments might be made as the work progressed, but not less than 25% of the contract price was to be reserved by the Government until the completion and final acceptance of the cutter. The payments so reserved are those in question known as the "reserved claims." There was no provision in the contract itself prohibiting its assignment, and for the true and faithful performance of the contract, the Trigg Company expressly bound "itself and each of its successors, assigns, and legal representatives." But a bond of \$45,000.00 was given by the Trigg Company, as a part of the contract, with the Virginia Trust Company as surety, conditioned for the faithful performance of the contract by the Trigg Company, "its successors, assigns, and legal representatives," and further conditioned that the Trigg Company, its successors, assigns, and legal representatives "shall promptly make payments to all persons supplying said contractors labor and materials in the work provided for in said contract.

The Trigg Company applied to the First National Bank of Richmond for loans to enable it to execute this contract, and received twenty-five thousand (\$25,000.00) dollars on April 26, 1900, filing its contracts on that day with the bank, but making no written assignment at that time.

On May 11, 1900, the board of directors of the Trigg Company passed a resolution authorizing the execution of a power of attorney to the bank to collect all payments under its contracts with the Government for the construction of said revenue cutters. This power of attorney was duly executed on that day, and was sent by mail to the honorable Lyman J. Gage, Secretary of the Treasury, on May 12, 1900. (Exhibit "First National Bank No. 1," depositions, pages 207a, 208a.)

Subsequently a payment was made by the Government on the "Tuscarora" by draft sent directly to the William R. Trigg Company, and thereupon the bank wrote to inquire why the draft had not been sent to it as authorized by its power of attorney.

On October 17, 1900, a letter was written to the bank from the Treasury Department by C. F. Shoemaker, captain, R. C. S., chief of division, acknowledging that the power of attorney had been duly received in the revenue division service and stating that it had been filed with the officers of the Treasury Department for their information. The writer then continued:

225 "When the bill was approved and referred to the auditor for settlement, the request was made that the draft be sent direct to the First National Bank, of Richmond, Virginia. The neglect to do so was not the fault of this office, but was an oversight in the office of the treasurer of the United States, from which the draft was sent.

"In future payments I will cause the draft to be sent to this division, and will see that it is mailed to the first National Bank, agreeably with your request."

Thereafter all checks were made payable to the William R. Trigg Company and mailed directly to the bank. They were then endorsed by the Trigg Company, and duly collected by the bank.

The "Tuscarora" was completed, accepted, and paid for in full by the Government.

The "Mohawk" was not completed prior to the appointment of the receiver, and the bank claims a prior lien upon the amount due the William R. Trigg Company on a final settlement with the Government. The debt of the bank is represented by three demand notes of the Trigg Company, to-wit:

Note of October 16, 1900, for-----	\$25,000.00
Note of October 16, 1900, for-----	25,000.00
Note of April 29, 1901, for-----	5,070.00

This last note is subject to a credit of \$3,034.00 as of the 30th day of September, 1902.

The "Mohawk" was completed after the appointment of the receiver, and on May 6, 1904, the sum of \$26,705.35 was paid by the Government into this cause in full settlement therefor.

The following arguments have been presented in behalf of the First National Bank:

1. "That the Government is the only party who can question the validity of its assignments."

But the contrary was held in *Burke v. Child*, 88 U. S., 441; *Spofford v. Kirk*, 97 U. S., 484; *Hager v. Swayne*, 149 U. S., 242; *Ball v. Halsell*, 161 U. S., 72; *Prairie State National Bank v. United States*, 164 U. S., 227; *Greenville Savings Bank v. Lawrence*, 76

Fed. Rep., 545.

226 2. "That its assignment is not within the prohibitory reason or spirit of the act."

But the assignment to the bank was the assignment of a claim for an unascertained amount—a claim that had not been allowed by the Government, and one that might never be allowed. No warrant had issued for it, and the assignment was clearly not executed in accordance with the terms and requirements of the statute. No case has been cited in which such an assignment has been upheld, before the claim assigned had been ascertained by the Government. And the mischiefs designed to be remedied by the act, as set forth in *Spofford v. Kirk*, *Goodman v. Niblack*, and *Hager v. Swayne*, all inhere in this assignment. I mean that such mischiefs undoubtedly attached, potentially if not actually, to the assignment. Nor is it necessary to impugn the motives or produce the proof of any overt act of the bank, to sustain this statement. The purpose of the act was to protect the Government from the possibility of having its rights injured by being compelled "to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction;" and further to protect the Government from the possibility

of being subjected, by a person not originally interested in the claim, "to such improper influences in prosecuting the claims before the departments, the courts, or the Congress, as desperate cases, when the reward is contingent on success, so often suggest."

In construing 3477, the one in question, and 3737, another one similar to it, it has been considered by the Supreme Court of the United States sufficient to say:

"The sections under consideration were passed for the protection of the Government. *Goodman v. Niblack*, 102 U. S., 556. They were passed in order that the Government might not be harassed by multiplying the number of persons with whom it had to deal, and always might know with whom it was dealing until the contract was completed." *Hobbs v. McLean*, 117 U. S., 567.

3. "That the Government has recognized the assignment."

The facts on this point have been fully set forth, and simply show that certain agents of the Government noted the assignment. Checks were still made to the William R. Trigg Company, though 227 mailed to the bank, and could not be collected without the endorsement of the Trigg Company. The cases show that the only recognition by the Government which will prevent an assignment from being assailed is an actual payment or delivery of the warrant. The assignment in the case of *Spofford v. Kirk* presents a much stronger case for the assignee than this, both upon legal and equitable grounds, and yet it was held to be void. And the same thing may be said of the assignments in the case of *Greenville Savings Bank v. Lawrence* and other cases cited.

The case of *Spofford v. Kirk* is one of the earliest cases involving a construction of this statute; but, as was said by Mr. Justice Gray in a very much later case:

"That decision has never been questioned or overruled by the court." *Ball v. Halsell*, 161 U. S., p. 72.

It is true the money the bank is now seeking to obtain has been paid the court during the progress of this cause. But the amount had not been ascertained when the assignment was made; and if the assignment was void when made, it cannot be rendered good by subsequent events.

In addition to the terms of the federal statutes and the decisions of the federal courts, we must not overlook the terms of the contract under which this assignment was made. The bond was a part of the contract and one of its conditions was that the Trigg Company, its successors, assigns and legal representatives should "promptly make payments to all persons supplying said contractors labor and materials in the work provided for in the said contract." It is manifest from the contract that the payments were reserved in order to protect the Government both against defective work and materials and defective title, the bond being taken to strengthen this protection. The commissioner is of opinion that by the terms of the contract any valid assignment made by the Trigg Company of said contract or of any interest therein would be subordinate to the claims of "all

persons supplying said contractors labor and materials in the work provided for in the said contract."

For the reasons stated and upon the authorities quoted, therefore, the commissioner holds that the assignment in question is void
 228 under the federal statute and decisions; and that even though it might be held not to be so void, it must be held to be subordinate to all liens duly acquired for labor and supplies furnished the William R. Trigg Company, under the terms of the Virginia statute.

II.

The reserved claim on the Galveston, assigned to the Virginia Trust Company, of Richmond.

II. The "reserved claim" on the "Galveston," assigned to the Virginia Trust Company, of Richmond.

The facts concerning this claim and its assignment are as follows:

On December 14, 1899, the William R. Trigg Company contracted with the United States Government for the construction of a cruiser known as the "Galveston."

Certain payments were to be made as the work progressed, and 10% of the contract price was to be reserved by the Government until the completion and final acceptance of the cruiser.

The payments so reserved are those in question known as the "reserved claims." The sixteenth clause of the contract expressly provided:

"It is mutually understood, covenanted, and agreed by and between the respective parties hereto that this contract shall not, nor shall any interest herein, be transferred by the party of the first part to any other person or persons."

And in the eighteenth clause of the contract it was provided:

"6. When a payment is to be made under this contract, as a condition precedent thereto, the Secretary of the Navy may, in his discretion, require, for the protection of the party of the second part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights in rem of any kind against said vessel or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired, for
 229 or on account of any work done, or any machinery, fitting, equipment, or material already incorporated as a part of said vessel, or on hand for that purpose, or that such liens or rights have either been released absolutely or so subordinated to the rights of the Government as to make its lien all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel.

"7. When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of the party of the first part, said party of the first part shall be en-

titled, within ten days after the filing and acceptance of its claim, to receive the said special reserve, or the surplus, if any, of said reserve fund, or so much of either as the said party of the first part may be entitled to on the execution of a final release to the party of the second part, in such form as shall be approved by the Secretary of the Navy, or all claims of any kind or description under or by virtue of this contract."

Needing money for the execution of this contract, the Trigg company applied to the Virginia Trust Company of Richmond for loans. It was agreed that loans should be made by the trust company for this purpose upon an assignment of the interest of the Trigg company in said government contract.

On June 19, 1900, the board of directors of said Trigg company passed a resolution authorizing the execution of a power of attorney to enable said trust company "to collect all payments due by the United States Government for the construction of the cruiser 'Galveston'."

Said power of attorney was duly executed and delivered to the trust company, and was mailed by it to Henry M. Deniston, U. S. pay director, together with a certified copy of said resolution. Thereafter all checks for payments on account of the "Galveston" were drawn to the order of the William R. Trigg Company and mailed by the Government to the Virginia Trust Company. The William R. Trigg Company received from the Virginia Trust Company advances amounting to one hundred thousand (\$100,000.00) dollars for the construction of said cruiser, and the trust company also turned over to it all checks received from the Government as aforesaid.

The "Galveston" was not completed prior to the appointment
230 of the receiver in this cause, and the debt due by the William R. Trigg Company to the Virginia Trust Company on this account is represented by two negotiable notes of the William R. Trigg Company, to wit:

Note dated October 6, 1902, due January 4, 1903, for \$50,000.00.

Demand note dated July 7, 1902, for \$50,000.00.

The "Galveston" has been completed during the progress of this cause. It was estimated by the Government Board of Appraisal that there would be a balance of \$649.08 due by the Government to the William R. Trigg Company, but no evidence has yet been filed herein to show the actual result.

There are some differences between this claim and that of the First National Bank, but none upon which a material distinction can be made affecting the validity of the assignment. The commissioner is of opinion that this assignment is void under the Federal Statutes and Decisions. He is also of opinion that it was expressly prohibited by the terms of the contract, and that the assignment is subordinate to the claims of all persons supplying said contractors labor and materials in the work provided for in said contract, even though it might be held not to be void under the federal statute.

III.

The reserved claim on the "Benyuard" assigned to the Savings Bank of Richmond.

III. The "reserved claim" on the "Benyuard" assigned to the Savings Bank of Richmond, Virginia.

The facts concerning this claim and its assignment are as follows:

On September 9, 1901, the William R. Trigg Company contracted with the United States Government for the construction of a steel hull sea-going suction dredge with propelling machinery and electric plant, known as the "Benyuard," to be completed in sixteen (16) months after approval of the contract.

The contract was not approved until October 31, 1901, and the 16 months did not expire until after the Trigg company went into the hands of the receiver. The twelfth clause of the contract expressly provides:

231 "Neither this contract nor any interest therein shall be transferred to any other party or parties."

And in the bond given by the Trigg Company as a part of the contract for \$60,000.00 with the Virginia Trust Company as surety, it was provided:

"Now, therefore, if the above-bounden William R. Trigg Company shall and will, in all respects, duly and fully observe and perform all and singular the covenants, conditions, and agreements in and by the said contract agreed and covenanted by said William R. Trigg Company to be observed and performed according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, and shall promptly make full payments to all persons supplying it labor or materials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect; otherwise, to remain in full force and virtue."

Certain payments were to be made as the work progressed and 20% of the contract price was to be reserved by the Government until the completion and final acceptance of the dredge. The payments so reserved and those in question known as the "Reserved claims." The William R. Trigg Company found as the work progressed on this dredge that it needed money to continue operations, and applied to the Savings Bank of Richmond for a loan for that purpose. At the time of this application the vessel was only 5% complete, about \$13,000.00 having been expended in labor and materials for the construction of the boat, and several thousand dollars for contingent expenses.

No payment had then been made by the Government, as the first payment was not due until the vessel should be 10% complete. On December 20, 1901, the board of directors of the William R. Trigg Com-

pany passed a resolution authorizing an assignment to the Savings Bank of Richmond of all its rights under its contract aforesaid with the Government, and authorizing said bank to collect all amounts then due under said contract in order to secure said bank a loan of \$50,000.00 to be made to the company. The loan was made December 23, 1901, evidenced by a note of the Trigg Company payable four (4) months after date, the assignment was duly executed, and the bank was irrevocably constituted attorney in fact for the company to collect all sums of money under said contract, by suit or otherwise; and was expressly authorized to endorse the name of the William R. Trigg Company on any checks, drafts, or vouchers for the collections aforesaid. The Government was subsequently notified of said assignment and requested to send its payments to the bank. All checks for payments on account of this dredge were made out in the name of the William R. Trigg Company, but were mailed to the Savings Bank of Richmond pursuant to said notice.

When received by the bank the checks were duly endorsed by the William R. Trigg Company and then collected by the bank. Under this arrangement the bank now holds a demand note of the William R. Trigg Company dated August 28, 1902, for \$50,000.00, subject to a credit of \$5,000.00 as of September 12, 1902; \$5,000.00 as of November 20, 1902, and \$5,000.00 as of December 8, 1902. At the time of the appointment of the receiver the Government had paid \$142,550.80, and the reserve then amounted to \$35,637.70. In addition to this reserve, there was then due the William R. Trigg Company for work for which no payment had been made the sum of \$33,072.83, according to its method of bookkeeping, making with said reserve the total sum of \$68,710.53. But the reserve was created for the purpose of safe-guarding the interests of the Government in a final settlement; and as the dredge was incomplete it was not possible to say before its completion and acceptance by the Government, what, if anything, would then be due the William R. Trigg Company.

This case is in the main similar to that of the First National Bank. It differs in the fact that under its power of attorney, there are some differences, but none requiring a different decision concerning the validity of the assignment.

The commissioner is of opinion that this assignment is also void under the federal statutes and decisions. He is also of opinion that it was expressly prohibited by the terms of the contract, and that the assignment is subordinate to the claims of all persons supplying said contractors labor and materials in the work provided for in said contract, even though it might be held not to be void under the federal statute.

233 C. "Title to the boats in process" and materials set aside therefor.

As already stated there were certain boats in process of completion at the yards of the William R. Trigg Company and certain materials had been set aside for each one of them, at the time of the appoint-

ment of the receiver in this cause. These boats may be divided into two classes:

First. Boats in process for the United States Government.

Second. Boats in process for certain corporations.

Three (3) boats were being built for the Government and three (3) boats were being built for corporations. No two contracts were alike. It will, therefore, be necessary to set forth the facts in each case and to determine the rights of the parties under each contract.

I.

The title to the "Benyuard" and materials set aside therefor.

First. Title to boats in process for the United States Government and materials set aside therefor.

1. The "Benyuard."

On September 9, 1901, the William R. Trigg Company entered into a contract with Captain J. C. Sanford, Corps of Engineers, United States Army, for and in behalf of the United States of America, for the construction of a steel hull seagoing suction dredge, known in these proceedings as the "Benyuard." The contract price for the hull and propelling machinery of said dredge was two hundred and fifty-two thousand three hundred and seventy-five (\$252,375.00) dollars, in addition to which two thousand one hundred and eighty (\$2,180.00) dollars was to be paid for an electric plant to be installed therein. On the same day also, another contract was made between the same parties for the construction and installation of pumping engines and dredging pumps, suction, delivery pipes and connections complete on said dredge; but the rights of the
234 parties under the latter contract have already been determined by proceedings in this cause. (See William R. Trigg Company v. Bacyrus Company, 51 S. E. R., page 174.)

The provisions of the contract in question necessary to be borne in mind, may be summarized as follows:

Materials furnished and the work done by the William R. Trigg Company were to be subject to rigid inspection by an inspector appointed on the part of the Government, his decision to be final as to quality and quantity.

If the Trigg Company should fail to begin or prosecute the work in accordance with the specifications, which were made a part of the contract, the contract might be annulled by the Government. In that case all payments were to cease, and all money or reserved percentage must be retained until the final completion and acceptance of the boat. The Government was to have the right to recover anything paid for such completion in excess of the original contract price with the William R. Trigg Company, including all extra costs of inspection; and might proceed under 3709 of the Revised Statutes of the United States to provide for the completion of the boat by open

purchase or contract, unless the time for such completion should be extended.

It was expressly provided that the William R. Trigg Company should be responsible for and pay all liabilities incurred in the prosecution of the work for labor and materials.

Section nine of the contract was as follows:

"It is further agreed by and between the parties hereto that until final inspection and acceptance of, and payment for, all materials and work herein provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the party of the first part to reject any defective work or material or to require the fulfillment of any of the terms of the contract."

Section 199 of the specifications was as follows:

"The purpose and spirit of these specifications are that the contractor is to provide and deliver a staunch dredge hull and first-class machinery, complete in every respect."

Section 206 of the specifications was as follows:

"It is understood and agreed that the contractor assumes full responsibility for the safety of his employees, plant, and
235 materials, and for any damage or injury done by or to them from any source or cause."

Section 209 provided for sea trials at the expense of the contractor, any defects that might appear to be remedied at his expense and trials to be repeated until the steamer should be found satisfactory in all respects. Section 210 provided that if the requirements of the specifications were complied with, ten (10) equal payments should be made, based on the reports of the inspector, the first when the hull and propelling machinery should be 10% complete, the second when 20% complete, and so on, the last payment to be made when the vessel should be turned over to the United States after successful trial; from each of said payments, except the last, 20% to be reserved until final payment.

Section 211 was as follows:

"The parts paid for under the system of partial payments above specified shall become thereby the sole property of the United States, but this provision shall not be interpreted as relieving the contractor from the sole responsibility for the proper care and protection of said parts prior to the delivery of the dredge to the United States, or from any other of the provisions of these specifications."

Section 212 provided for insurance against fire and marine risks at the contractor's cost, for and in behalf of the United States, to at least the amount of each partial payment.

The evidence shows that the Government had paid \$142,550.80 on account of this contract when the receiver was appointed in this cause, and that said dredge was then 70% complete (depositions, page 414).

On July 14, 1903, a decree was entered in this cause discharging the "Benyuard" to the United States Government, in consideration of certain stipulations entered into by the Government pursuant to

the act of Congress for such case made and provided. (Files Nos. 127 & 128.)

There is no evidence yet in the cause showing the cost of the final completion of the "Benyuard," or giving a final statement of accounts between the receiver and the Government.

Section 3709 of the Revised Statutes of the United States, referred to in said contract, is as follows:

236 "All purchases and contracts for supplies or services, in any of the departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the services. When immediate delivery or performance is required by the public exigencies, the articles or service required may be procured by open purchase on contract, at the place and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

The incomplete vessel was not returned for taxation by the W. R. Trigg Company.

The question is whether the title to the unfinished boat passed to the United States, or whether it remained in the William R. Trigg Company, under the contract set forth above.

This is not a question simply between the parties to the contract, but the rights of the creditors are involved.

It is not a question simply of the rights of general creditors, but of the rights of special creditors under what is known as the labor and supply lien law of Virginia. This law is embodied in section 2485 of the code of 1887, as amended by acts 1891-2, page 362. It has been quoted in full and discussed in Commissioner Massie's Report No. 1 in this suit, and need not be again so quoted.

The first portion of the statute deals with labor liens; but as the labor liens in this cause have all been fully satisfied under the decree entered herein on July 28, 1905 (file No. 392), we are not concerned with that portion of the statute.

That part of the statute with which we are now concerned declares:

"All persons furnishing supplies to a mining or manufacturing company, necessary to the operation of the same, shall have a prior lien upon the personal property of such company other than that forming part of its plant to the extent of the money due them for such supplies, and also a lien upon all the estate real and personal of such company, which said last lien, however, upon all such real and personal estate, shall be subject and inferior to any lien by
237 deed of trust, mortgage, hypothecation, sale, or conveyance, made or executed and duly admitted to record prior to the date at which said supplies are furnished."

It has been decided in this suit that the Trigg company was a manufacturing company, and that its contracts were therefore subject to the provisions of said statute.

In seeking to discover the meaning of this statute we are now confronted by two questions:

First. What is the "prior lien" given?

Second. Upon what is the lien given?

Two liens are created. One is declared to be "a prior lien," and the other is "an inferior lien." The whole statute must be read together, and the definition of the "inferior lien" should help to define the prior lien.

The inferior lien is declared to be "inferior to any lien by deed of trust, mortgage, hypothecation, sale, or conveyance made or executed and duly admitted to record, prior to the date at which said supplies are furnished."

It would seem, therefore, that the prior lien was intended to be prior to "any lien by deed of trust, mortgage, hypothecation, sale, or conveyance made or executed and duly admitted to record prior to the date at which said supplies are furnished."

The lien "by sale or conveyance," must be presumed to refer to the liens created by 2462 of the code of 1887, as amended by acts 1889-90, page 108, chapter 135.

This statute of Virginia must be borne in mind in interpreting the contract between the Trigg company and the United States. It has been held again and again that every contract must be considered as made with reference to the existing laws by which its performance may be governed, which is but a corollary to the rule that no contract can be made against the law. As was said by Mr. Justice Swayne:

"It is also settled that the laws which subsist at the time and place of the making of a contract and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated into its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement."

United States v. Quincy, 4 Wall., 535.

238 And in a later case in which the same statement was repeated, it was said:

"These propositions may be considered consequent axioms in our jurisprudence." Walker v. Whitehead, 16 Wall., p. 314.

But the contract under discussion was made with the United States, and we are met at the threshold of our inquiry into its meaning by the question whether that circumstance is to affect the rules to be applied in its interpretation. Fortunately this question has been answered in no uncertain way by the highest authority. It has been said by Mr. Chief Justice Waite:

"The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them." United States v. Bostwick, 94 U. S., 66.

And the same eminent justice said in another case:

"The principles which govern inquiries as to the conduct of individuals, in respect to their contracts, are equally applicable where the

United States are a partner." *United States v. Smith*, 94 U. S., p. 214, citing *Smoot's case*, 82 U. S., p. 47, and *Manufacturing Company*, 84 U. S., 592.

The truth is that when the Government becomes the purchaser of property, it takes the title subject to the same rules as those which regulate the transfer of it to private persons. "If it is subject to liens or encumbrances, it passes *cum onere*." *Briggs v. A Light Boat*, 7 Allen, p. 297.

These doctrines seem to be admitted by Hon. L. L. Lewis, the United States district attorney, who says in one of his briefs:

"For instance, it is not necessary to dispute the propositions that, generally speaking, the contracts of the Government are to be construed according to the rules applicable to contracts between individuals, and that when property which is subject to liens is purchased by the Government, it is taken *cum onere*."

239 Though contracts made by and with the United States are to be interpreted as other contracts, the commissioner is of opinion that the authorities conclusively show that the contracts made by the United States are not subject to State registry statutes. *Dollar Savings Bank v. United States*, 19 Wall., 227; *Stanley v. Schwalby*, 147 U. S., 508, and *United States v. Snider*, 149 U. S., 210.

It is furthermore settled that a contract for the building of a vessel is not a maritime contract, "but a contract made on land and to be performed on land, and therefore is not a subject of maritime jurisdiction." *Peoples Ferry Company v. Beers*, 20 How., 400; *Roach v. Chapman*, 22 How., 129, and *The Glide*, 167 U. S., 606-620.

One of the leading cases on the subject of title to an unfinished vessel is that of *Andrews v. Durant*, decided in New York in 1854. This was a case of contest between the creditors of a shipbuilder and his patron for whom the vessel was being built. The opinion in this case was delivered by Judge Denie, who said:

"It is no doubt competent for the parties to agree when and upon what conditions the property in the subject of such a contract shall vest in the prospective owner. The present question is, therefore, simply one of construction. * * * The question is simply what was the contract of the parties? (2 Meesom & Welsby, 602.) If it was intended that certain parts of the vessel should pass to the defendants, as the work progressed and was paid for, it was very easy for the parties to have so provided in the contract in express terms."

And in construing the contract it was held that partial payments and superintendence by the patron were not sufficient to make the title vest in him, but that the title remained in the shipbuilder, and that the unfinished vessel was subject to the claims of his creditors. (*Andrews v. Durant*, 11 N. Y., 35.)

Another leading case is that of *Briggs v. A Light Boat*, decided in Massachusetts in 1863. Briggs furnished lumber for certain light boats being built by Andrews under contract for the United States. The contract was entire, providing for payment by the Govern-

ment upon completion and acceptance of the boats. The Government had the right to furnish an inspector, but was not required to do so. The Government had the right to declare the contract
 240 forfeited in case the work should not progress or be done satisfactory. The boats were completed and accepted by the Government, and Briggs then claimed a lien for his supplies under the Massachusetts statutes.

Held that title of the United States was subject to the liens.

It is to be observed that the Government had actually taken possession of the light boats before Briggs undertook to assert his lien. The question, therefore, was how the lien could be enforced, and the case went up again upon this opinion to the Supreme Judicial Court of Massachusetts. Upon the second hearing it is reported as *Briggs v. Light Boats*, and Honorable Horace Gray, jr., who subsequently became one of the justices of the Supreme Court of the United States, delivered an able and exhaustive opinion in which he reviewed all the authorities, English and American, going back to the earliest records and patiently threading his way through the labyrinth of decisions. The result of his investigations was to sustain the decision rendered two years previously upon the first appeal in the suit of *Briggs v. A Light Boat*, 7 Allen, 287. But it was held that a lien attached to a vessel built for the United States before the Government took possession of the same, can not be enforced in a state court upon proceedings commenced after the Government has so taken possession.

This decision was based upon the fundamental proposition that no sovereign can be sued without his consent; but it was declared that the rule was different in cases in which the United States is plaintiff, citing the *St. Jago de Cuba*, 9 Wheat., 409; *United States v. Wilder*, 3 Sumner, 308. (*Briggs v. Light Boats*, 11 Allen, 157.)

The propositions laid down in the light-boat cases just cited have been frequently sustained and quoted with approval, and are firmly established in our jurisprudence. (*The Siren*, 7 Wall., 152; *United States v. Douglas or The Davis*, 10 Wall., 15.)

In the "*Davis*" it was held that "proceedings in rem to enforce a lien against property of the United States are only forbidden in cases where, in order to sustain the proceeding, the possession of the United States must be invaded under process of the court." (*The "Davis,"* 10 Wallace, p. 15.)

The case of the Revenue Cutter No. 2, decided in the United States District Court for the District of Oregon, in 1877, was,
 241 like this, a case of contest between the United States and persons claiming liens under the statute law of Oregon. The contract was with the Oregon Iron Works, which failed before the vessel was completed. The labor and materials were furnished after the vessel had been launched, and when it was so far completed that the agent of the United States had taken possession of the cabin, ward-room, and sail-room, in which were deposited certain articles of ship's furniture belonging to the United States, and the Govern-

ment had employed two additional men to watch and help take care of the vessel, being employed in keeping the decks clean and lines fast and wetting the paint work. These employees of the Government were on the vessel when it was seized under process of court for enforcement of the liens claimed as aforesaid. The contract provided that the boat should be built and delivered "afloat and complete in all respects, and ready for service;" and also contained the usual provision for inspection and rejection of material, partial payments with reservations, and satisfactory sea trial. The court held:

"Upon this state of facts the law is that at and before the time of the seizure the vessel was the property of the Iron Works. The contract was for the construction and delivery of a thing not then in esse. Under such a contract the party for whom the vessel is built acquires no property therein during the progress of the work, nor until the completion and delivery of the same." (*Andrews v. Durant*, 11 N. Y., 40, and cases therein cited.) The American authorities are uniform upon this question, although the English courts, since the case of *Woods v. Russell*, 5 Barn & Ald., 942, decided 1822, have held otherwise." *Revenue Cutter No. 2, 4 Sawy. (U. S.), p. 143.*

But the leading case of the highest controlling authority for guidance in construing the government contracts in this suit is that of *Clarkson v. Stevens*, 106 U. S., 505, in which was involved the title of the United States to the Stevens Battery, a novel gunboat designed by Robert L. Stevens, of New Jersey. In April, 1842, an act of Congress was passed authorizing the Secretary of the Navy to contract with said Stevens "for the construction of a war steamer, shot and shell proof, to be built principally of iron, upon the plan of said Stevens." From January 5, 1845, to December 14, 1855, payments were made by the Government amounting to \$500,000.00 on account of the battery. Stevens died in 1856, having spent \$113,579.00 out of his own means in addition to the government advances; and in July, 1862, Congress released to his heirs-at-law all the right, title, and interest of the United States in and to the Stevens Battery. Edwin A. Stevens, the brother of Robert L. Stevens, continued to work on the vessel until he died in 1868. He spent \$89,187.37 towards its completion, and in his will he directed his executors to complete it at a cost not exceeding \$1,000,000.00, and then to offer it to the State of New Jersey as a present. The executors actually spent \$919,915.94, and found that they would be unable to complete the battery within the authorized amount. The State of New Jersey accepted the vessel in its unfinished condition under an act of Congress authorizing it to do so, and sold it for \$75,000.00 in 1871. A contest arose between the heirs of Robert L. Stevens and the widow of Edwin A. Stevens, the former claiming that the title to the battery had passed to the United States under its payments therefor; that said title subsequently passed to them under the act of 1862 aforesaid, and that the gift to the State of New Jersey under the will of Edwin A. Stevens was consequently void. Upon appeal to the Supreme Court of the United States, Mr. Justice Matthews re-

viewed the leading English and American cases, beginning with the opinion delivered by Lord Tentenden, then Chief Justice Abbott, in 1822, in *Woods v. Russell*, 5 B. & Ald., 942, and making the following quotation which has become a legal classic, from the opinion of Lord Campbell, chief justice, in the suit of *Wood v. Bell*:

"When a man contracts with another to make any article for him for a given price, the general rule is, in the absence of all circumstances from which a contrary conclusion may be inferred, that no property passes in the chattel until it be completed and ready for delivery; on the other hand, where a bargain is made for the purchase of an existing ascertained chattel, the general rule, in the same absence of opposing circumstance, is that the property passes immediately to the vendee; that is, that there is at once a complete bargain and sale. But these general rules are both and equally founded on the presumed intention of the parties. If, in the first, there are attendant circumstances from which the intention may be inferred

243 that the property shall pass in the incomplete and growing chattel as the manufacture of it proceeds, or even any ascertained materials from which it is to be carried to perfection, that intention will be affected; and equally in the latter if it appear that the parties intended to postpone the transfer of the property until the payment of the price or the performance of any other condition, such intention will be upheld in the courts of law." (*Wood v. Bell*, 5 El. and Bl., 791.)

The result of Lord Campbell's reasoning was that every case must stand upon its own bottom and that "previous decisions, therefore, are mainly useful in serving to guide our judgment in estimating the weight of circumstances as evidence of intention;" and he concluded by saying:

"Still it must be remembered, after all, that what we have to determine is a question of fact, namely: What, upon a careful consideration of all the circumstances, we believe to have been the contract into which the parties have entered."

In view of all the authorities, Mr. Justice Matthews announced his conclusion as follows:

"The courts of this country have not adopted any arbitrary rule of construction as controlling such agreements, but considered the question of intent, opened in every case, to be determined in every case upon the terms of the contract and the circumstances attending the transaction. (1 Pars. Ship. & Am., 63.) And such seems to us to be the true principle." (*Clarkson v. Stevens*, 106 U. S., 505.)

The contract in *Clarkson v. Stevens* provided for an inspecting officer, but expressly declared that he should not pass upon the quality or fitness of the materials or workmanship, but merely as to the cost thereof. It provided that the inspector should receive and receipt for all materials on account of the Navy Department, which materials should then be distinctly marked with the letters "U. S.," and should become the property of and belong to the United States. It further required Stevens to give a mortgage upon his shipbuilding

plant for the faithful performance of the contract, and provided that the final payment should only be made after final inspection and acceptance.

Upon these facts it was held that the United States ac-
244 quired no title to the Stevens battery by its partial payments therefor.

It seems to the commissioner that the facts in the present case call for a similar decision.

It is true that here the decision of the inspector was to be final as to quality and quantity; and that the dredge was to be insured for the benefit of the United States to the amount of all payments. But it has been held that these circumstances are not sufficient to pass title. *Andrews v. Durrant*, 11 N. Y., 35; *Briggs v. A Light Boat*, 7 Allen, 287; *The Revenue Cutter No. 2*, 20 Fed. Cas., 573, or 4 Sawy., 143; and *William R. Trigg Company v. Bucyrus Company*, 51 S. E. Rep., 174.

The leading intent of the contract was like that in *Clarkson v. Stevens*, "that the vessel in all respects was to be at the risk of the builder until, upon its completion, the United States should accept it, upon final examination and certificate, as conforming in every particular with the requirements of the contract." This is clearly expressed even in 211 of the specifications, which provided that "all parts paid for under the system of partial payments above specified shall become thereby the sole property of the United States," but declared that the contractors should be solely responsible therefor until final delivery of the dredge to the United States. This intent is also emphasized by 4 of the contract which provided that the contract might be annulled if the work should not be prosecuted in accordance with the specifications; that thereupon all payments should cease; and that all money or reserved percentage should be retained until final completion and acceptance. It is further emphasized by 8 of the contract, which provided that the Trigg Company should be responsible for and pay all liabilities incurred in the prosecution of the work for labor and materials; which provision, in connection with the provisions of the bond, plainly shows that the United States made the contract with reference to the labor and supply lien laws of Virginia. It is further emphasized by 9 of the contract, which provided that until final inspection, acceptance and payment for all materials and works, no prior inspection, payment, or act was to be construed as a waiver of the right of the Government to reject any defective work or material or to require the fulfillment of any of the terms of the contract. It is further emphasized by 199 of

the specifications, which declared that the purpose and spirit
245 of the specifications were that the contractor was to provide and deliver a staunch dredge hull and first-class machinery, complete in every respect. It is further emphasized by 206 of the specifications, which declared that by special understanding and agreement the contractor should assume full responsibility for the

safety of his employees, plant, and materials, and for any damage or injury by them or to them from any source or cause.

It is further emphasized by 209 of the specifications, which provides for sea trials at the expense of the contractor and the remedy of all defects "until the steamer is found satisfactory in all respects." And it is further emphasized by 210 of the specifications under which 20% of the contract price should be reserved for payment upon final acceptance.

In *Clarkson v. Stevens*, the court held that the reservation of final payment and the requirement of a mortgage for the faithful performance of the contract were conclusive circumstances to show that no title was intended to be acquired by the United States upon its partial payments.

Both of these circumstances inhere in the present contract. For while the contractor was not required to give a mortgage, he was required to give bond with good security in the penalty of \$60,000.00 for the faithful performance "of all and singular the covenants, conditions, and agreements" of said contract, and especially for the prompt payment in full to all persons supplying labor and materials.

For these reasons the commissioner is of opinion that no title passed to the United States by reason of its partial payments upon the dredge "Benyuard," and that the hull and propelling machinery of the same, and all materials purchased therefor, delivered to the United States authorities under the decree entered herein on July 14, 1903 (Files Nos. 127 to 133), was subject to the supply liens duly matured and reported herein, and to the claims of the other creditors of the W. R. Trigg Company.

The evidence shows that said liens attached long before the United States acquired any possession of said dredge, and the commissioner is further of opinion that said liens may be enforced against the United States pursuant to the stipulations filed herein.

Upon this point it may be sufficient to quote from the *Davis*, in which was declared the "rule on which we are to act in
246 favor of the promotion of justice" in the enforcement of liens against the United States, it being admitted "that the lien can only be enforced by the courts in a proceeding which does not need a process against the United States, and which does not require that property shall be taken out of the possession of the United States." The court said:

"But what shall constitute a possession which, in reference to this matter, protects the goods from the process of the court? The possession which would do this must be an actual possession, and not that mere constructive possession which is very often implied by reason of ownership under circumstances favorable to such implication. We are speaking now of a possession which can only be changed under process of the court by bringing the officer of the court into collision with the officer of the Government, if the latter should choose to resist. The possession of the Government can only exist through some of its officers, using that phrase in the sense of

any person charged on behalf of the Government with the control of the property, coupled with its actual possession. This, we think, is a sufficiently liberal definition of the possession of property by the Government to prevent any unseemly conflict between the court and the other departments of the Government, and which is consistent with the principle which exempts the Government from suit and its possession from disturbance by virtue of judicial process." The Davis, 10 Wallace, p. 15. See also, The Revenue Cutter No. 2, 4 Sawyer, p. 143.

The commissioner is therefore of opinion that, even if any title passed to the United States, such title was subject to the supply liens; and that the liens can be enforced as aforesaid, because the United States has not acquired such possession of the "Benyuard" as protects it from the process of the court.

It may be recalled that when certain officers of the United States undertook to seize and take possession of the vessels being built for the Government at the Trigg yards, they were stopped by the injunction of the court, and no possession was acquired by the United States until sought in an orderly manner, under the stipulations filed in this cause. By these stipulations the United States has submitted itself and the vessels claimed by it to the jurisdiction of the courts.

The commissioner has been led to the above conclusion by his study of this case, but he is not unmindful of the fact that in the case of the W. R. Trigg Company v. The Bucyrus Co., 51 S. E. R., p. 174, the court said:

"Under the contract between the United States and the Trigg Company, all parts of the machinery paid for by the Government under a specified system of partial payments became thereby the sole property of the U. S., and as already pointed out, this provision formed a part of the contract of the Trigg Company with the Bucyrus Company."

But the court cites no authority to sustain this ruling, and the point does not appear to have been contested in that suit.

II.

The title to the Mohawk and the materials set aside therefor.

II. The "Mohawk."

This boat was technically known as "Revenue Cutter No. 8," and was built under contract with the Secretary of the Treasury of the United States. The contract was dated April 20, 1900, and provided that the vessel should be delivered "afloat and complete in all respects and ready for service;" that it should be "subject to inspection and approval of superintendents appointed by the Secretary of the Treasury, with full power to reject or approve any materials or articles used in said construction and at any stage of the work before final approval;" that the Government might complete the vessel in case the Trigg Company failed to do so, at the cost of the latter;

that insurance should be taken out for the benefit of the United States; that the Government should pay for said vessel "when the same shall have been fully completed and finished and delivered as specified, and shall have been inspected by the properly authorized inspecting officers for the Government, pronounced satisfactory in all respects, and the trial trip successfully made, the sum of \$217,000.00;" and that the trial trip shall be made at the expense of the contractors. It was then:

248 "Provided, That the Secretary of the Treasury may, in his discretion, make payments under this contract during the progress of the work, not to exceed seventy-five (75% per cent) of the value of the labor and materials actually furnished and delivered (and not paid for) at the date of any such payment:

Provided, That a lien shall be, and hereby is, reserved to the United States upon the hull, machinery, fittings, and equipment of said vessel, and the materials on hand for use in her construction, respectively and collectively, for all moneys advanced on account thereof, and that such liens shall commence with the first payment, and shall thereupon attach to the work done, and the materials furnished, and shall in like manner attach, from time to time, as the work progresses, and as further payments are made, and shall continue until the completion and acceptance of said vessel."

At the same time and as a part of this contract a bond was given by the William R. Trigg Company with the Virginia Trust Company as surety, in the penalty of \$45,000.00 conditioned for the proper construction of the vessel according to the contract and specifications, and that the Trigg Company "Shall promptly make payments to all persons supplying said contractors, labor, and materials in the prosecution of the work."

When the Trigg Company went into the hands of the receiver, the United States had paid \$149,437.00 on this contract. The original contract price was \$217,000.00, but additions were made amounting to \$3,270.00 in course of the construction, making the total price \$220,270.00. The receiver first estimated the vessel to have been 82% completed, and therefore worth \$180,621.00 at the contract price, upon which \$31,184.00 had been earned and remained unpaid. But after giving this testimony he wrote a letter to Commissioner Daniel, in which he stated that he desired to correct these figures, giving the estimate of 88% completion, and making the value of the work performed at the contract price \$193,837.00, and the balance due thereon \$44,400.00. (Depositions, pages 395-397.)

The receiver further testified that the Trigg Company had actually spent \$365,000.00 upon the "Mohawk" up to the date of the receivership, which will indicate the enormous loss it sustained in attempting to fulfill this contract.

249 On the other hand it was testified by two witnesses for the Government, Captain George E. McConnell, captain of the Revenue Cutter Service, and Chief Engineer D. McComas French, mechanical engineer of the Revenue Cutter Service, agents represent-

ing the United States in the construction of the "Mohawk," that the boat was about 80% complete at the date of the receivership; that the Government could have done the work done by the Trigg Company for about \$176,000.00, and that the boat would probably have sold for about \$75,000.00 at auction. These figures, however, were given as matters of opinion and estimates, the cross examination showing that these two witnesses were not experts in the cost of construction. But the figures given by Mr. Myers were taken from the books of the William R. Trigg Company, and can be relied upon as giving the actual facts in the present case. The incomplete vessel was not returned for taxation by the W. R. Trigg Company.

Two distinctions between this case and that of the "Benyard" are:

First. That here the contract was made with the Secretary of the Treasury.

Second. That here the Government only undertakes to acquire a lien for its payments.

A joint resolution of Congress was passed on May 5, 1894, providing as follows:

"That the Secretary of the Treasury be, and he hereby is, authorized to make partial payments, from time to time, upon existing contracts and all contracts hereafter made for the construction of vessels for the Treasury Department, but not in excess of 75% of the amount of the value of the work already done; that the contracts hereafter made shall provide for a lien upon such vessels for all advances so made:

Provided, That nothing in this joint resolution shall be construed to hereafter authorize any partial payments, except on contracts stipulating for the same and then only in accordance with such contract stipulations." 28 Statutes at Large, pp. 582-3.

A joint resolution differs from an act. The latter is a law governing all persons under the jurisdiction of the enacting power; the former is a rule for the guidance of the agents and servants of the sovereign.

It cannot be held, therefore, that this joint resolution of Congress imposes a lien in favor of the United States upon vessels being constructed for it. It is simply a rule prescribing how contracts shall be made by the Secretary of the Treasury; and this contract appears to have been made in accordance with the rule, a lien having been reserved for the payments advanced.

There are three great classes of liens, (1) common law liens; (2) equitable liens, and (3) statutory liens.

The commissioner is of opinion that the lien reserved in the present case in favor of the Government was not a statutory lien, for the reason given above; and that it cannot be upheld either as a common law or as an equitable lien in opposition to the rights of the creditors in this suit.

Possession of the lienor is necessary for the validity of a common law lien; and even if the lien attempted to be reserved in this case

could be called a common law lien, it would fail for lack of possession by the Government.

In the opinion of the commissioner the lien belongs to the class of equitable liens, the effect of which does not depend upon possession by the lienors but must be determined by the terms of the contract construed as a whole and with regard to the rights of third parties under the statutes of Virginia.

The case of *Gregory v. Morris* has been cited as authority for the proposition that the lien reserved on the "Mohawk" in favor of the United States was not made to depend upon the possession but upon the contract, and should be enforced in this case. But the facts in *Gregory v. Morris* distinctly differentiate it from this case. There *Morris* sold cattle to *Gregory* and delivered them, under a written contract, retaining a lien providing that if the purchase money should not be fully paid by October 1, 1873, the cattle should be taken by *Poteet*, the vendor's agent, and sold to pay the amount then due. The money was not paid, and *Poteet* took forcible possession of the cattle on October 4, 1873. It was held that the contract was a mortgage and that *Morris* did not lose his lien on the cattle by delivery of possession to *Gregory*; but the court said:

"When *Poteet* assumed the exclusive possession of the property, no rights of third persons had intervened, and there was nothing to prevent the execution of the agreement according to its terms. This clearly gave *Morris* the right, after October 1st, if the purchase money was not paid, to take the cattle into his own possession, detain them until the balance due him was discharged, and sell them if necessary to obtain his money." *Gregory v. Morris*, 6 U. S., 619.

In the case of the "Mohawk" the rights of third persons had intervened before the United States acquired any possession of the vessel, and there is a conflict between the equitable lien claimed by the United States and the statutory lien given the creditors of the *William R. Trigg Company* under the laws of Virginia.

Moreover, the contract for the "Mohawk" distinctly shows that it was made with reference to said statutory lien; for the United States not only undertook to protect itself by reservations of 25% on all payments, but required the *Trigg Company* to furnish a bond with good security for forty-five thousand (\$45,000.00) dollars conditioned for the proper construction of the vessel according to contract and specifications and that the *Trigg Company* "shall promptly make payments to all persons supplying said contractors labor and materials in the prosecution of the work."

In treating of equitable liens, *Pomeroy* says:

"The equitable lien is strictly analogous to, and is undoubtedly derived from, the hypotheca of the Roman law. Hypotheca was the right given a creditor over a thing belonging to another, in order to secure the payment of a debt, while the property and possession remained in the debtor. It was thus distinguished from *pignus*, in which the possession was delivered to the creditor, and he thus acquired a special property." 3 *Pom. Eq.* 233, Note 3.

This passage is quoted by counsel for the United States, and in discussing the lien reserved in the case of the "Galveston," he says: "The reservation, then, of the lien or liens in favor of the Government in the present case was the hypothecation, which, in any just view of the case, is superior to the claims of the supply creditors. The supply lien statute of Virginia expressly subordinates a lien for supplies to any previous lien, deed of trust, mortgage, hypothecation, etc."

252 But a reading of the statute will show that the subordination of which the learned counsel speaks refers to "a lien upon all the estate, real and personal," of a mining or manufacturing company, and not to a "prior lien upon the personal property of such company other than that forming a part of its plant."

The commissioner is of opinion that this prior lien is prior to any "lien or deed of trust, mortgage, hypothecation, sale or conveyance, made or executed and duly admitted to record prior to the date at which such supplies are furnished."

For these reasons, the commissioner is of opinion that the supply liens in this case are superior to the lien reserved in the contract in favor of the United States.

He is further of the opinion, in view of the authorities, and for the reasons given in the discussion of the case of the "Benyuard," that no title passed to the United States in the incomplete vessel, and the materials set aside therefor, by reason of partial payments thereon, but that the title to said vessel remained in the William R. Trigg Company, and is subject to the liens matured in this cause, as well as to the claims of general creditors.

III.

The title to the Galveston and the materials set aside therefor.

III. The "Galveston."

On December 14, 1899, a contract was made with the Secretary of the Navy for the construction of a protected cruiser, to be known as cruiser 17, "Galveston." The contract called for the completion of the cruiser in accordance with the plans and specifications, and its delivery at Norfolk. All materials and workmanship were to be subject to inspection, and it was provided that insurance should be taken out for the benefit of the United States.

The eighth clause of the contract called for completion and delivery in thirty months, and contained this provision: "But the lien of the United States upon said vessel and the materials on hand for use in the construction thereof, respectively and collectively, for all moneys paid on account thereof shall commence with the first
253 payment, and shall thereupon attach to the work done and materials furnished, and shall in like manner attach from time to time as the work progresses, and as further payments are made, and shall continue until it shall have been properly discharged."

The ninth clause of the contract provided that the vessel shall be "sufficiently strong to carry the armament, equipment, coal stores, and machinery prescribed" by the plans and specifications, and the weight of machinery not to exceed 427 tons. A deduction "of five hundred dollars shall be made for any excess of weight, and a further reduction of ten thousand dollars to be made in case there shall be an excess of five per cent in weight." This clause further provides that the vessel shall be accepted only upon satisfactory tests by trial trips, at the expense of the contractors, in which an average speed of 16 1/2 knots per hour shall be maintained for four consecutive hours.

The tenth clause provided for preliminary acceptance in case the preliminary trials should prove satisfactory, but thirty thousand dollars was to be reserved from the payments until final trial and acceptance within five months. The vessel might be conditionally accepted if it developed and maintained a speed of not less than 15 1/2 knots an hour, subject to a deduction of twenty-five thousand dollars per one-quarter knot for speed between 16 1/2 and 16 knots, and fifty thousand dollars per one-quarter knot for a speed between 16 and 15 1/2 knots. If the vessel failed to exhibit an average speed of at least 15 1/2 knots an hour, it might be accepted or rejected at the option of the Secretary of the Navy, at a reduced price, and upon conditions to be agreed upon between him and the contractor. If any weakness, defect, failure, or deterioration should develop within five months after preliminary or conditional acceptance, it should be made good at the cost of the contractors. And in case of rejection the contractor should refund all payments, and also return to the Government all equipment attached to the vessel or in their possession, or pay for same.

The twelfth clause provided that the contract might be declared forfeited in case the contractors failed to go forward with the work and make satisfactory progress; and thereupon the contractors agreed to acknowledge themselves justly indebted as for liquidated and ascertained damages equal to the aggregate amount of all payments, and covenanted to refund the same on demand or within sixty days

thereafter, the Government to hold as collateral security for
 254 said refund said vessel, or so much thereof as should then have been completed, and all materials furnished or on hand for the purpose of construction. A complete inventory should then be taken under the direction of the Secretary of the Navy of all work done or commenced on the vessel and all materials on hand applicable thereto, the property of the contractors, and the same should then be appraised at the fair market value thereof, including a reasonable and customary margin of profit upon the work satisfactorily completed.

The thirteenth clause of the contract provided that after such report the Secretary of the Navy might in his discretion proceed to complete the vessel, using all suitable materials on hand; and that the title to the vessel, or so much thereof as should have been completed, and to all such materials, should forthwith vest in the Government; and the contractors covenanted to surrender the possession

of all materials on hand, together with the use of the yard and plant, and all machinery, tools, and appliances for the completion of the said vessel.

The fourteenth clause of the contract provided that any completion by the Government should be at the risk and expense of the contractors, who agreed to pay any excess of cost above the contract price.

The fifteenth clause of the contract provided that the Government should not be obliged to accept and pay for the vessel, or any part thereof, unless completed in strict conformity with the contract, and that this qualification should apply to each and every clause, covenant, and condition expressed or implied in the contract.

The eighteenth clause of the contract provided for the payment of \$1,027,000, in twenty equal instalments as the work progressed, with a reservation of ten per cent for each instalment; and further provided, "When a payment is to be made under this contract, as a condition precedent thereto, the Secretary of the Navy may, in his discretion, require, for the protection of the party of the first part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights in rem of any kind against said vessel, or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired for or on account of any work done or any machinery, fitting, equipment, or material already incorporated as a part
255 of said vessel, or on hand for that purpose, or that such liens

or rights have either been released absolutely, or so subordinated to the rights of the Government as to make its lien for all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel." At the same time, the W. R. Trigg Company was required to execute a bond for \$154,050, with the Virginia Trust Company as surety, conditioned for the faithful performance of the contract.

When the Trigg Company went into the hands of a receiver the United States had paid \$698,514.45 on this contract. Certain extras, amounting to \$5,289.45, had been added to the original contract price; and according to the report of the board of appraisers, filed in this cause of June 22, 1903, the total amount earned by the Trigg Company on the "Galveston" was \$699,163.53; therefore, this report showed a balance due the Trigg Company of \$649.08 upon the work already done.

But the cruiser has since been completed by the Government at the expense of the William R. Trigg Company, and no evidence has yet been filed in this cause to show how the parties will stand upon a final settlement of the account.

On June 18, 1903, the receiver reported to the court that certain officers of the United States were threatening to take possession of the "Galveston," and thereupon a decree was entered in this cause as follows:

"That said William G. Groesbeck, Emil Theiss, and W. H. Moody, jr., and each of them, their agents, attorneys, or employes, and all other persons, be, and they are hereby, enjoined and restrained from in any manner interfering with or taking possession of any property, and especially the cruiser "Galveston" and dredge "Benyuard," under the control of or in the possession of Lilburn T. Myers, receiver of the court in this cause, under its orders heretofore entered, until the further orders of this court."

On June 22, 1903, the United States appeared, by its attorney, Hon. L. L. Lewis, and filed certain stipulations for the release of the "Galveston" and "Benyuard," pursuant to sections 3753 and 3754 of the Revised Statutes of the United States, and a decree was filed on that day releasing the said vessels accordingly. The sections of the
256 Revised Statutes of the United States, under which the said release was made, are as follows:

Sec. 3753. Releasing property from attachment.—Whenever any property owned or held by the United States, or in which the United States have or claim an interest, shall, in any judicial proceeding under the laws of any State, district, or territory, be seized, arrested, attached, or held for the security or satisfaction of any claim made against such property, the Secretary of the Treasury, in his discretion, may direct the Solicitor of the Treasury to cause a stipulation to be entered into by the proper district attorney for the discharge of such property from such seizure, arrest, attachment, or proceeding, to the effect that upon such discharge, the person asserting the claim against such property shall become entitled to all benefits of this and the following section. Nothing herein contained shall, however, be considered as recognizing or conceding any right to enforce by seizure, arrest, attachment, or any judicial process, any claim against any property of the United States, or against any property held, owned, or employed by the United States, or by any department thereof, for any public use, or as waiving any objection to any proceeding instituted to enforce any such claim.

Sec. 3754. Payment.—In all cases where a stipulation is entered into under the preceding section, and, in consequence thereof, the property is discharged, and final judgment is afterward given in the court of last resort to which the Secretary of the Treasury may deem proper to cause such proceedings to be carried, affirming the claim for the security or satisfaction of which such proceedings have been instituted, and the right of the person asserting the same to enforce it against such property by means of such proceedings, notwithstanding the claims of the United States thereto, such final judgment shall be deemed, to all intents and purposes, a full and final determination of the rights of such person, and shall entitle such person, as against the United States, to such rights as he would have had in case possession of such property had not been changed. Whenever such claim is for the payment of money, and the same is by such judgment found

to be due, the presentation of a duly authenticated copy of the record of such judgment and proceedings shall be sufficient evidence
 257 to the proper accounting officers for the allowance thereof; and the same shall thereupon be allowed and paid out of any moneys in the Treasury not otherwise appropriated. The amount so to be allowed and paid shall not, however, exceed the value of the interest of the United States in the property in question.

There is no evidence in this cause that the Secretary of the Navy, before making the partial payments on the "Galveston," required any evidence that any release of rights in rem of any kind had been acquired against the vessel or her machinery, fittings, or equipment, or the material on hand for her construction, or that such liens or rights had either been released absolutely or so subordinated to the rights of the Government as to make its lien for all payments paramount; nor is there any evidence that such liens or rights were ever released.

The unfinished vessel was not returned for taxation by the W. R. Trigg Company.

For the reasons given in the discussion of the case of the "Mohawk," and upon the authorities and the facts in this case, the commissioner is of opinion that the supply liens in this case are superior to the lien reserved in the contract in favor of the United States.

He is further of the opinion that no title passed to the United States in the incomplete vessel by reason of partial payments thereon, but that the title to said vessel remained in the William R. Trigg Company, and is subject to the liens matured in this cause, as well as to the claims of general creditors.

I.

Title to the Bristol and Chester and the materials set aside therefor.

SECOND. TITLE TO BOATS IN PROCESS FOR CERTAIN CREDITORS, AND MATERIALS SET ASIDE THEREFOR.

I. The "Bristol" and "Chester," for the Pennsylvania Railroad Company.

On June 30, 1902, a contract was made by the William R. Trigg Company with the Pennsylvania Railroad Company for the
 258 construction of two tugs, known as the "Bristol" and "Chester." The provisions of the contract necessary to be borne in mind may be summarized as follows:

The first clause provided that the contractor should furnish all materials and build, finish, and deliver two steam tugboats in six months at Jersey City, New Jersey.

The second clause provided that the railroad company should pay for the work done and materials furnished, after inspection, the

sum of \$97,750.00 for the two boats, in ten partial payments, as follows:

When 1/10 of the work is performed-----	\$10,000.00
When 2/10 of the work is performed-----	10,000.00
When 3/10 of the work is performed-----	10,000.00
When 4/10 of the work is performed-----	10,000.00
When 5/10 of the work is performed-----	10,000.00
When 6/10 of the work is performed-----	10,000.00
When 7/10 of the work is performed-----	10,000.00
When 8/10 of the work is performed-----	10,000.00
When completed-----	10,000.00
30 days after delivery-----	7,750.00
	<hr/> 97,750.00

The third clause of the contract provided for an inspector to inspect the workmanship and all materials used, with full right to condemn or reject if found inadequate or defective.

The eighth clause of the contract was as follows:

"Eighth. It is also understood, stipulated, and agreed that when all the work embraced in this contract is completed agreeably to the specifications and in accordance with the directions and to the satisfaction, and acceptance of the said party of the second part, the party of the first part shall also furnish to the party of the second part releases, under seal, from all the mechanics and material men, all liens, claims, and demands for materials furnished and provided and work and labor done and performed upon or about the work herein contracted for or otherwise arising under this contract."

The tenth clause of the contract required the contractors to safeguard against accidents, injuries, damages, or hurt to any
259 person or property during construction and to be responsible for the same, and to indemnify and save the railroad company harmless therefrom, and from all fines, penalties, and losses incurred for or by reason of the violation of any city or borough ordinance or regulation or the law of the State or United States while the said work is in progress of construction.

The eleventh clause provided for insurance against loss or damage by fire, water, or accident in favor of the railroad company, to an amount equal to that advanced in partial payments.

In the thirteenth clause the contractors agreed to "test and make a satisfactory trial of all parts of the said tug boats, boilers, engines, and appurtenances; to make good any defects that might develop in the workmanship or quality of material for a period of three months after delivery, unless otherwise specified, provided the design is not in fault, and the defects are not caused by the action of the employees of the party of the second part," and "to arrange to have the said tug boats pass inspection by the United States inspectors at the port of New York."

It was proved by the deposition of Samuel Porcher that the Pennsylvania Railroad Company paid \$60,000 prior to the appointment of the receiver on account of the construction of these boats, but that no releases or liens were ever asked for or furnished. (Depositions, pp. 188-193.)

It was proved by the deposition of Francis L. DuBosque that he came to Richmond on an average of once every two weeks to inspect the materials and work done on the said tug boats, and that orders for materials were sent out on printed forms of the William R. Trigg Company as follows:

"This order is for _____
Hull numbers _____
_____ department."

filled in as follows:

"This order is for Pennsylvania R. R. Co.'s tugs
Hulls numbers 20 and 21
_____ department."

and that after describing the articles, these words were added:
260 "Subject to Pennsylvania R. R. Co.'s inspection;" and that shipments were directed to be made to the William R. Trigg Company, Richmond, Va. (Depositions, pp. 193-202.)

It was proved by the deposition of Mr. L. T. Myers that the hulls were not returned for taxation by the Trigg Company "because I did not understand that I was required by law to return them;" but upon cross-examination it was shown that no return could have been made under the law prior to the appointment of the receiver. Mr. Myers, who was first vice-president and acting manager of the William R. Trigg Company, further testified: "I considered and understood the vessels to be the property of the Pennsylvania Railroad Company to the extent of their payments thereon." Mr. Myers further testified that it was customary to order all materials upon printed blanks similar to those used in this case, and that each order was in every case designated by the name of the patron for whom the vessel was being built, as well as by the number of the hull. He further testified that the "Bristol," hull No. 20, was about seventy per cent complete, and the "Chester," hull No. 21, was about sixty per cent complete at the date of the appointment of the receiver in this cause.

On September 22, 1903, these boats were sold at public auction, in their incomplete state, and bought by the Pennsylvania Railroad Company, at the price of \$38,100, and the said sale was confirmed by a decree entered herein on October 5th, 1903. (File No. 172.)

This money is therefore the substance in dispute in this case.

The commissioner is of opinion that the contract in this case was an entire one, "to build, finish and deliver two complete tugboats."

This is shown, not only by the express provision of the contract, but by the specifications, which were made a part of the contract, and declared, "The intention of these specifications is to cover the construction, complete and ready for service, of a tugboat of the dimensions specified."

The eleventh clause of the contract declared that the partial payments were advances; and even after the completion of the tugs, the Trigg Company was required to test and make satisfactory trials of all parts of the boats and machinery and appurtenances; to make

good any defects that might develop in the workmanship or quality of material within three months after delivery, and to arrange to have the boats pass inspection by the United States inspectors at the port of New York.

In addition to this, it was expressly stipulated in the eighth clause of the contract that after completion of the boats according to the specifications, and acceptance by the Pennsylvania Railroad Company, releases, under seal, should be furnished by the William R. Trigg Company from all mechanics and material men of all liens, claims and demands for materials furnished and provided and work and labor done upon or about the boats.

There is no clause in the contract either attempting to reserve a lien in favor of the Pennsylvania Railroad Company for its partial payments, or attempting to provide that the title should pass to the extent of any payments made.

The first of Lord Ellenborough's rules for the determination of title to a chattel under a contract of this sort is as follows:

"Where by agreement the vendor is to do anything to the goods for the purpose of putting them into that state in which the purchaser is bound to accept them, or, as it is sometimes worded, 'into a deliverable state,' the performance of those things shall, in the absence of circumstances indicating a contrary intention, be taken to be a condition precedent to the vesting of the property."

This rule has remained unshaken since its pronouncement by this great authority, and was adopted as a matter of course by Judge Daniel in the case of *Dixon v. Myers*, 7 Grattan, p. 204. In that case, 56 hogsheads of tobacco had been sold by Myers to Dixon, and set aside for the vendee; all that remained to be done was to weigh and mark them. But the court held that the title had not passed to Dixon, and that the loss of the tobacco by fire must fall on Myers.

It must be remembered that we are dealing in this case not merely with the rights of parties to the contract, but that the rights of third parties are involved. What might be sufficient to pass title between the parties to a contract may be held insufficient to pass title against the rights of creditors; and this is particularly true in Virginia, where we have a statute directly bearing upon the subject.

This statute is section 2465 of the code of 1887, as amended by the acts of 1895-6, p. 842; acts of 1897-8, p. 833; and acts of 1899-00, p. 89; and reads as follows:

262 Section 2465. Contracts, deeds, etc., that are void as to creditors and purchasers unless recorded. Every such contract in writing, and every deed conveying any such estate or term, and every deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels, and every bill of sale or contract for the sale of goods and chattels, when the possession is allowed to remain with the grantor (and any such bill of sale or contract shall be in writing and signed by the vendor), shall be void as to subsequent purchasers for valuable consideration and without notice, and creditors, until and except from the time that it is duly admitted to

record in the county or corporation wherein the property embraced in such contract, deed, or bill of sale may be; provided, that the possession of any such estate or term, without notice of other evidence of title, shall not be notice to said subsequent purchasers for valuable consideration."

In addition to the authorities heretofore cited in this report the commissioner calls attention to the following in support of the conclusions reached by him:

1 Schouler's Per. Property (2nd ed.), p. 231.

Parsons on Contracts (8th ed.), p. 259.

Lowe v. Austin, 20 N. Y., p. 181.

Merratt v. Johnson, 7th Johns. (N. Y.), p. 473.

Haney v. Rosa Belle, 28 Wis., p. 248.

Tompkins v. Dudley, 25 N. Y., p. 273.

Anglo-Egyptian Nav. Co. v. Rennie, L. R. 10 C. P., 271.

The Sam Slick, 1 Spr. (U. S.), p. 289.

The Abby Whitman, 15 Fed. Cas., p. 17.

Dupuy v. Delaware Ins. Co., 63 Fed., p. 689.

25 Am. & Eng. Ency. (2 ed.), 879.

"In America the prevailing rule is that in the sale or manufacture of things to be paid for in instalments, or as the work or manufacture progresses, the title does not pass as fast as the instalments are paid, but only when they are fully paid, unless the facts and circumstances show that a different intention existed. The first is illustrated by the frequent sale of furniture, mechanical instruments, etc., on the 'instalment plan,' so called, in which it is generally agreed that no title passes until the payment of the last instalment. The other
263 illustration is the building of a house or other structure in which payments are to be made as the work progresses; and it is generally held that no title passes as payments are made, but only when fully done, unless the contract clearly manifests a different intention." Benjamin on Sales (Bennett's Notes, 1888), 268. Citing Clarkson v. Stevens, 106 U. S., p. 505; Wright v. Tetlow, 99 Mass., p. 397; Elliott v. Edwards, 35 N. J. L., 265; 36 Id., p. 449; Lang's Appeal, 81 Pa. St., p. 18; Coursin's Appeal, 79 Id., 220; Scull v. Shakespeare, 75 Id., 297; Green v. Hall, 1 Houston, 506; to sustain the rule. Sanford v. Wiggins Ferry Co., 27 Ind., 522; Scudder v. Calais Steamboat Co., 1 Cliff., 370; Bank of Upper Canada v. Kilaly, 21 Upper Canada, Q. B., p. 9; to the contrary.

In view of these authorities, and of those heretofore cited in this report, and of the Virginia statutes, and after a careful study of the contract in question, the commissioner is of opinion that the title to these unfinished tugboats did not pass to the Pennsylvania Railroad Company, but remained in the William R. Trigg Company, subject to the supply liens matured and reported in this cause, and to the rights of other creditors, under the Virginia statutes.

The purchase money received for said tugboats is therefore liable to said liens and the claims of said other creditors.

II.

The title to the Cape Charles and materials set aside therefor.

II. The "Cape Charles," for the New York, Philadelphia and Norfolk Railroad Company.

On July 17, 1902, the William R. Trigg Company made a contract with the New York, Philadelphia and Norfolk Railroad Company for the construction of a sea-going tug, known as "Hull 23, Cape Charles."

The contractors agreed to furnish all materials, and build 264 the said tug boat to the satisfaction and acceptance of the superintendent of motive power of said railroad company; all materials and labor used throughout to be subject to the approval of the said superintendent, he to have full power at any time during the progress of the work to reject any unsuitable material, and to cause any inferior or unsafe work to be taken down and altered, at the cost of the contractors.

The contract price was \$68,250.00, and payments were to be made as follows:

When one-fifth of the work has been performed.....	\$12,000.00
When two-fifths of the work has been performed.....	12,000.00
When three-fifths of the work has been performed.....	12,000.00
When four-fifths of the work has been performed.....	12,000.00
When completed and delivered at Norfolk, Va.....	12,000.00
Thirty days after delivery.....	8,250.00
Total contract price.....	68,250.00

The contract then provided, "When all the work embraced in this contract is completed, agreeably to the specifications, and in accordance with the directions and to the satisfaction and acceptance of the said superintendent of motive power, the party of the second part shall also furnish to said party of the first part release, under seal, from all the mechanics and material men, of all liens, claims, and demands for materials furnished and provided, and work and labor done and performed upon or about the work herein contracted for, or otherwise arising under this contract." The contractors further agree to guard against accidents, injuries, or hurt to any person or property, and to indemnify and save the railroad company harmless from liability therefor, and from all fines, penalties, and loss incurred for or by reason of any city or borough ordinance or regulation, or law of the State or United States, while the said work was in progress of construction.

The contractors further agreed to insure the structure against loss or damage by fire, water, or accident in favor of the railroad company, to an amount equal to its advances, and to make delivery to the railroad company at Norfolk, and to make satisfactory trial of the boat and machinery, and to make good any defects that might 265 develop within three months of delivery, consequential dam-

ages excepted; provided the railroad company has observed usual diligence, and to arrange for the boat to pass inspection by the United States Government inspectors at Norfolk.

The specifications, which were made part of the contract, also provided: "The intention of these specifications is to cover the construction, complete and ready for service, of a tugboat of dimensions specified."

It was proved that the railroad company paid twelve thousand dollars (\$12,000) on account of the said tugboats prior to the appointment of the receiver; and Lilburn T. Myers, who was the vice-president and acting manager of the William R. Trigg Company, testified that he considered the hull of this boat to be the property of the railroad company to the extent of payments thereon; and that the said hull was about thirty per cent complete when the receiver was appointed.

The incomplete vessel was not returned for taxation by the William R. Trigg Company.

No evidence was offered to show that any releases were ever required of or made by mechanics or material men, or any other creditor, of any lien, claim, or demand for material furnished or work done on the said tugboat.

On December 17, 1903, this tugboat was sold at public auction in this suit, and on January 14, 1904, a decree was entered herein confirming the sale to the Burlee Dry Dock Company, at the price of \$5,100.00, for the hull, machinery, and all materials assigned thereto. (File No. 203.) This money is therefore the substance of the dispute in this case.

This case presents practically the same facts as those in the case of the Pennsylvania Railroad Company for the construction of the boats "Bristol" and "Chester."

The commissioner is therefore of the opinion that the title to this unfinished tugboat did not pass to the New York, Philadelphia and Norfolk Railroad Company, but remained in the William R. Trigg Company, subject to the supply liens duly matured and reported in this cause, and to the rights of general creditors under the Virginia statutes.

The purchase money received for said tugboat and materials is therefore liable to said liens, and to the claims of general creditors.

III.

266 *The title to the Lucas and materials set aside therefor.*

III. "Lucas."

On November 7, 1901, the William R. Trigg Company made a contract with the Standard Oil Company of New York, "to build and deliver, afloat and complete in all respects, and ready for service according to the plans and specifications hereto attached, a tank steamer, known as "Hull 19, Lucas."

The construction was to be subject to inspection and approval on the part of the Standard Oil Company of New York, "with full power to reject or approve any material or articles used in the construction or equipment of said vessel, and at any stage of the work before final approval."

In case the contractors failed or neglected to fulfill the contract, the Standard Oil Company might direct purchases to be made of all the necessary material, and cause the vessel to be completed at the cost of the contractor.

"For the aforesaid steamship finished, furnished and completed as herein provided, there shall be paid to the party of the first part by the party of the second part the sum of four hundred thirty-nine thousand five hundred dollars (\$439,500.00); that is to say:

When first material arrives in yard \$21,975.00," and so on in twenty equal instalments, the last one to be made, "when vessel is fully completed, ready for sea and accepted"; providing, however, "that the above payments shall be made only upon the production of certificates from the superintendent and surveyor to the effect that the construction has progressed satisfactorily up to the point at which such payments become due, and before final payment, that the vessel and machinery are satisfactory in all respects."

The contract further provided, "It is understood that all reference in this contract to vessel completed shall mean fully completed according to the spirit and intent of the specifications and plans constituting part of this contract."

In the specifications the Standard Oil Company was frequently referred to as "owners," as will appear from the following extracts:

"A set of lines and model to be submitted to owners for approval."

267 "All plating to stand the usual forge and bending test to the satisfaction of the owners' representatives."

"All material must also be inspected and tested at the makers' works by an inspector to be appointed by the owners."

"Plan of hatches to be submitted to owners for approval."

"Fuel oil compartment to be submitted to owners for approval. Windless to be of 'make as may be selected by owners."

"Anchors of make to be approved by owners."

"Bottom painted with anti-fouling paint selected by owners."

"Engine and thrust bearing foundation to be built in accordance with plans to be approved by owners."

Pilot house to be "fitted up as owners may direct."

"All work to be made tight, iron to iron except as directed by owners' superintendent."

"All shell rivets to be driven with heavy hammers and finished with light ones to the satisfaction of owners' representatives."

"Two sets of detail drawings to be furnished owners."

Hoisting engine of "size and make selected by owners."

"Oil pumps (2) to be supplied by owners, with 10-inch suction, delivered in yard of builders."

"Valves to be of a type approved by owners."

"Complete plans of piping to be submitted to owners for approval."

Ventilation fans "connected to cargo mains as directed by owners."

Ballast donkey (1) "to be supplied by owners," delivered at ship yards, builders to put same on board," etc.

Electric light plant "according to detailed specifications to be furnished by owners."

The above extracts are made from specifications for the hull. There are similar clauses in the specifications for machinery.

It was proved by R. C. Veit, manager of the lighterage department of the Standard Oil Company of New York, that partial payments were made amounting to \$219,750, all supervised by him; that D. E. Ford was the superintendent in charge of the construction at the Trigg yards for the Standard Oil Company, assisted by Messrs.

Drake and Athorholt; that Athorholt resided in Richmond 268 during the construction, and remained after the appointment of the receiver "to look after the property of the Standard Oil Company to look after the material which belonged to us;" that the Pittsburg Testing Laboratory tested the material at the mills for the Standard Oil Company; that the Standard Oil Company bought the two oil pumps, the ballast donkey pump, and the towing machine, and delivered the same to the Trigg company as required by the specifications, and that these articles were subsequently turned over to the Standard Oil Company under a decree in this cause.

Mr. Veit further testified that he and Mr. Lilburn T. Myers, first vice-president and acting manager of the William R. Trigg Company, understood that the title to the vessel vested in the Standard Oil Company as payments were made. (Dep., pp. 341-356.)

It was proved by the deposition of D. E. Ford, superintendent of marine construction for the Standard Oil Company, that the materials for this vessel were inspected at the different mills by the Pittsburg Testing Laboratory, and again inspected at the Trigg yards, and that no payments were made until the work had been approved and accepted.

On cross-examination, this witness testified that all materials were ordered by the Trigg Company, and that the Standard Oil Company was not responsible for these orders; also that the two oil pumps, ballast donkey pump and the towing machine mentioned by Mr. Veit were shipped to the Standard Oil Company, in care of the William R. Trigg Company, Richmond, Virginia; that no other articles were so shipped; that these articles were purchased directly by the Standard Oil Company, all other property, so far as he knew, being purchased by the Trigg Company. (Dep., pp. 356-362.)

It was proved by the deposition of Wm. G. Atherholt that he was the resident inspector for the Standard Oil Company, at the Trigg yards, during the construction of this vessel, and that he remained in Richmond after the appointment of the receiver.

It was also proved that certain boiler materials bought of William Cramp & Sons Ship and Engine Building Company, for this boat was still at the yards of the said Cramp's and claimed by the Standard Oil Company. (Dep., pp. 363-370.)

It was proved by the deposition of Lilburn T. Myers, the receiver, who was the first vice-president and acting manager of the
 269 William R. Trigg Company; and also by the deposition of R. C. Veit aforesaid, that the contract was made with the Cramp & Sons Ship Building and Engine Company by the William R. Trigg Company for the construction of the boiler for this boat; that the Trigg company asked payment of the Standard Oil Company when the material for the said boiler arrived at the ship yards of the Cramps, under that clause of its contract which called for the payment of \$21,975, "when boiler material is on yard," and that said payment was made by the Standard Oil Company to the Trigg Company, and enabled the latter to meet its payment due to the William Cramp & Sons Ship and Engine Building Company, upon the agreement between all the parties, including the William Cramp & Sons Ship and Engine Building Company, that the ownership of the boiler should vest in the Standard Oil Company to the extent of payments made by the Trigg Company to the Cramp Company; and that this arrangement was made to place the Standard Oil Company in the same position as if it were making payments on account of material delivered at the yards of the Trigg Company. (Dep., pp. 370-380.)

This was the only express agreement between the Standard Oil Company and the Trigg Company that title should vest in the former to the extent of payments made for the work and material, and it will be observed that this title was to vest, not as payments were made by the Standard Oil Company, but as payments were made by the Trigg Company; in other words, the Standard Oil Company trusted the Trigg Company to pay for the materials, and stipulated with the William Cramp & Sons Ship and Engine Building Company that, so far as they were concerned, title should vest in the Standard Oil Company to the extent of payments actually made for the materials furnished by the Cramps.

It is clear, therefore, that no title to these boilers ever vested in the William R. Trigg Company, nor did the Trigg Company ever have any possession of them.

This state of facts distinguished the question concerning these boilers from the question concerning other parts of the unfinished vessel, all of which, except the two oil pumps, the ballast donkey pump and the towing engine, were purchased by, delivered to, and kept in the possession of the William R. Trigg Company.

Mr. Myers further testified as follows:

270 "I supposed that the vessel was the property of the Standard Oil Company to the extent of any payments made."

And upon cross-examination, he said:

"No doubt whatever had ever arisen in my mind on that point prior to the appointment of the receiver; indeed, I will say that the question never occurred to me."

He was asked:

"Had your mind ever been directed to the question of ownership or title until after the failure of the William R. Trigg Company?"

His reply was:

"No, sir."

Again he said:

"I am not conscious of having debated the subject in my mind in any way, although I had an impression that in receiving payments the company was giving a quid pro quo in the delivery of the goods; in other words, I looked upon it as merely a question of purchase and sale, and so much a matter of custom as to require no mental process on my part." (Dep. pp. 378-9.)

Again, being pressed to say whether his mind had been directed to the question of ownership at the time the insurance policies were taken out, he said:

"No, sir; except that I am now reminded that at the time the policies were written, I understood by the mention of the Standard Oil Company as the beneficiary, that it was interested to the extent of such payments as it had made."

By decree entered herein on November 5, 1903, the hull and machinery of the "Lucas" and its material were sold at public auction to the Standard Oil Company for thirty-five thousand dollars (\$35,000), with the use of the Trigg Ship Yards for its completion, and it was decreed:

271 "All claims or liens asserted or filed against property sold by this decree, or against any part thereof, be, and the same are hereby, transferred from the said property to the said purchase money to be deposited as aforesaid in the State Bank of Virginia, to have as against said purchase money the same priority, force, effect, and validity, if any, that they might have had against the property sold by this decree, and none other; it being the intention of this decree that said purchase money shall remain at interest in the State Bank of Virginia, and await the final decision by the court of the various questions as to title and liens raised by the pleadings." (File No. 188.)

The substance of the dispute in this case is, therefore, the title to the said sum of thirty-five thousand dollars (\$35,000.00), with interest.

Counsel for the Standard Oil Company argues that the intention of the parties to the contract will control the title to the unfinished vessel, and that the intention to pass the title may be strongly inferred from the supervision of the structure and partial payments at specified stages of the work. He admits, however, that these provisions are not conclusive of the intention of the parties, and says:

"On the contrary, the weight of authorities in America holds that to ascertain the intention of the parties, not only must these two provisions be looked at, but the whole contract, together with the surrounding circumstances."

But he says in another part of his note:

"The two provisions in question are considered to point so strongly to such an intention that the additional reenforcing or corroborating matter required to make them conclusive need be but slight."

This last statement might find support in the English authorities, but it seems to the commissioner that it can not be sustained by the American authorities.

The American authorities ordinarily relied upon to support this proposition are:

Moody v. Brown, 34 Me., 107;

Butterworth v. McKinley, 11 Humphrey (Tenn.), 206;

Sanford v. Wiggins Ferry Company, 27 Ind. 522;

272 Scudder v. Calais Steamboat Co., 1 Cliff, 370.

Moody v. Brown was a contest between the maker of stereotyped plates and a customer. The plates were defective and not acceptable to the customer, but he offered to pay something in compromise. This offer being declined, the maker brought suit, and it was held that the customer was not liable for anything. The effect of this decision was that the title remained in the maker. The commissioner has been able to see nothing in the case except an obiter dictum, applicable to the present discussion.

Sanford v. Wiggins Ferry Company was a contest between the execution creditors of a ship builder and his patron. The Ferry Company paid instalments, took possession, and completed the boat. Under these circumstances, the court, following the English authorities, held that the title had passed from the builder and was safe from execution.

The facts in that case were very different from those in the case under discussion.

It is also to be observed that no lien was claimed under a special statute like the supply lien law.

Butterworth v. McKinley was a contest between a patron and the execution creditors of a coach maker. An incomplete buggy was paid for by the patron, and a new contract was made for painting and completion. It was held that title had passed.

The commissioner fails to see how this case could have any weight in the present discussion.

Scudder v. Calais Steamboat Company, following the English authorities, held that partial payments and superintendence were enough to pass title to an incomplete vessel.

But this case was decided in 1860, and reversed by the Supreme Court of the United States.

It is true that this reversal was made without reference to the special point now under discussion, which was not involved in the ap-

peal; but it is not safe to argue that "silence gives consent," under these circumstances.

The commissioner does not consider, therefore, that the Supreme Court meant to do more than it actually did do in rendering its opinion, nor does it appear that any statute giving a lien like the supply lien law in Virginia was involved in that controversy.

In addition to the above cases, counsel for the Standard Oil Company essays to lean upon *Clarkson v. Stevens*.

273 This case has already been discussed by the commissioner, and he need only now say that in his opinion it does not support the contention of counsel for the Standard Oil Company. "In that case, as we have seen," says counsel, "the court apparently thought the two provisions, viz, the presence of the inspector and the payment of the contract price in instalments as the work progressed would raise the presumption that the title was intended to pass before completion, which presumption would prevail unless repudiated or other provisions in the contract or attendant circumstances showing a contrary intent."

The commissioner has been unable to find any such expression in the opinion of the court. If the court thought what counsel says it apparently thought, it failed to say so, so far as the commissioner can see.

And it is also to be observed that none of the cases have attempted to lay down any precise rule by which it can be determined what "other provisions of the contract or attendant circumstances" may control the intent.

It is true that the contract provided that partial payments should be made at various times when the work had reached certain specified stages of completion, but it has not been proved that the payments were regulated by an actual valuation of the work at the different stages. On the contrary, it appears from Exhibit 3, filed with the deposition of Mr. Veit, that on May 23rd, 1902, Mr. Lilburn T. Myers, the vice-president of the William R. Trigg Company, wrote to him as follows:

"Please bear in mind that we have received about 80% of the material for this vessel, and have only had one payment."

It would therefore seem that certainly the first one of the two payments was not regulated by the ratio of the materials furnished and work done.

The facts that the orders indicated that the materials ordered were for "Standard Oil Company's tank steamer" does not seem to be of any special significance, for they were made upon printed forms of the William R. Trigg Company, with a blank provided for the name of the patron, and the evidence shows that the patron's name was inserted in every case. Those forms were made out for the convenience of the William R. Trigg Company and not as muniments of title.

It is argued that the construction placed upon the contract
274 by the parties should prevail, and in support of this contention,

King v. Norfolk & Western R. R. Co., 99 Va., p. 626, and Glenn v. Augusta P. B. & L. Co., 99 Va., 695, have been cited.

These cases show that this rule of construction is binding upon parties and their privies, but do not show that the rule can be invoked where the rights of creditors are involved. They were cases in which the meaning and effect of deeds to lands were to be determined by the action of the parties and their privies; but it is not believed that any case can be cited to show that the intention of parties to the contract can override the statute of the *lex loci contractus*.

In the present case we have to deal, not only with the contract, but with the statute of Virginia. There is no expression in the contract to show that the parties intended the title to pass, apart from the use of the word "owners" in some clauses of the specifications; but on the contrary there are expressions to indicate that the contract was entire, "to build and deliver, afloat and complete in all respects, and ready for service." And this was emphasized by the statement that "all reference in this contract to the vessel completed shall mean fully completed, according to the spirit and intent of the plans and specifications."

It is further emphasized by the provision that the Standard Oil Company should have full power to reject or approve any materials or articles used in the construction or equipment of the said vessel, and at any stage of the work before final approval.

It is further emphasized by the provision that in case the contractors neglected or failed to complete their contract, the Standard Oil Company might direct purchases to be made of all necessary materials and cause the vessel to be completed at the cost of the contractors.

It was further emphasized by the provision that final payment should not be made except upon certificate that the vessel and machinery were satisfactory, and that the same had been fully completed, ready for sea, and accepted.

Even if there had been an express provision in the contract that the title should pass, we would still be confronted with the provisions of section 2465 of the code of 1887, as amended by the acts of 1895-6, p. 842; the acts of 1897-8, p. 33, and the acts of 1899-00, p. 89.

It was argued by counsel that this statute was intended to
275 apply only to deliverable goods and chattels, and he concludes that therefore it does not apply to this case.

To reach this conclusion, the minor premise of the syllogism must be that the chattel in this case was not in a deliverable state; and if that be admitted, it seems to the commissioner that the case has been argued out of court, under the first of Lord Ellenborough's rules.

But it is argued that the *William R. Trigg Company v. Bucyrus Company*, 51 S. E. R., p. 174, has decided that contracts of this

character do not come within the Virginia recording acts. In that case the court said:

"The appellants contend that the title to the machinery did not vest to any extent in the United States as against the creditors of the Trigg Company, because the contract under which the Government claims was not recorded as required by section 2462, p. 1219, of the Virginia Code of 1904. Without expressing any opinion upon the question of whether or not the contracts of the United States come within the recording acts of Virginia, it is sufficient to say that this case does not come within the category of contracts which are required to be recorded by the section mentioned. No title was reserved in the contract, and there is no element of a conditional sale about the transaction."

Nothing is said in the Bucyrus case about section 2465 of the code, but the remarks of the court were confined to the contracts required to be recorded under section 2462; the court merely holding that the Bucyrus contract was not such an one as was required to be recorded under that section.

The commissioner is of opinion that section 2465 of the code, as amended, is applicable to this case, and that as the contract between the Trigg Company and the Standard Oil Company was not recorded as required by that section, no rights of the creditors of the Trigg Company can be affected thereby.

For these reasons, and under the authorities cited in this report, the commissioner is of opinion that no title in the incomplete vessel passed from the William R. Trigg Company to the Standard Oil Company against the rights of the creditors of the former, and that the Standard Oil Company has no right or title to the thirty-five thousand dollars (\$35,000.00) on deposit in the State Bank of Virginia to the credit of the court in this cause, but that the same is subject to the supply liens duly matured and reported herein, and to the rights of the general creditors of the William R. Trigg Company.

All of which is respectfully submitted.

EUGENE C. MASSIE,
Commissioner in Chancery.

Commrs. fee, \$850.00.

APPENDIX.

Virginia: In the Chancery Court of the City of Richmond.

S. H. HAWES & COMPANY, WHO SUE &C. }
v. }
WILLIAM R. TRIGG COMPANY AND OTHERS. }

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And at another day, to wit: At a Court of Chancery for the city of Richmond, continued by adjournment, and held at the court-room thereof, in the city hall, in said city, on the 31st day of October, 1906.

S. H. HAWES & COMPANY, WHO SUE, &C. }

v. }

WILLIAM R. TRIGG COMPANY & OTHERS. }

This day came L. L. Lewis, United States attorney, and prayed leave of the court to file his exceptions to the report of Commissioner Eugene C. Massie, dated April 12th, 1906, and filed on July 19th, 1906, in which exceptions of said L. L. Lewis, United States attorney, the Virginia Trust Company unites; came likewise the Virginia Trust Company and prayed leave of the court to file its exceptions to said report, in which exceptions of said Virginia Trust Company L. L. Lewis, United States attorney, unites, and in the second exception of the said Virginia Trust Company the First National Bank of Richmond, Virginia, also unites; came likewise the Virginia Trust Company, trustee in certain assignments for the benefit of James N. Boyd and others, and the said James N. Boyd and others, and prayed leave of the court to file their joint exceptions to said report; came likewise the Savings Bank of Richmond, Virginia, and prayed leave of the court to file its exceptions to said report; came likewise the First National Bank of Richmond, Virginia, and prayed leave

282 of the court to file its exceptions to said report; came likewise

the Standard Oil Company of New York and prayed leave of the court to file its exceptions to said report; came likewise the Pennsylvania Railroad Company and prayed leave of the court to file its exceptions to said report; came likewise the New York, Philadelphia and Norfolk Railroad Company and prayed leave of the court to file its exceptions to said report—which exceptions are embraced in eight separate papers, numbered, successively, from one to eight.

To the filing of each of the said exceptions of the said Virginia Trust Company, Standard Oil Company of New York, Pennsylvania Railroad Company, Savings Bank of Richmond, Va., and First National Bank of Richmond, Va., the following parties, namely—Chesapeake & Ohio Coal Agency Company, Morris, Wheeler & Company, Newport News Shipbuilding & Dry Dock Company, Carbon Steel Company, Hendricks Brothers, Hilles & Jones Company, Diamond State Steel Company, F. H. Lovell & Company, Ansonia Brass & Copper Company, International Sprinkler Company, National Tube Company, Lunkenheimer Company, Chicago Pneumatic Tool Company, J. L. Mott Iron Works, American Steel Casting Company, Carnegie Steel Company, Keasby & Mattison Company, George F. Blake Manufacturing Company, Laidlaw-Dunn-Gordon Company, Brown Hoisting Machinery Company, Southard & Company, Sayen & Schultz, Cleveland City Forge & Iron Company, Merchant & Company, Fore River Shipbuilding & Engine Company, Babcock & Wilcox Company, and Worth, Bailey & Company—severally objected on the ground that each and every one of the said exceptions of said parties are too vague and general; that no references are made to the record to sustain the same and no information given therein to inform the court or counsel of the purview thereof. Whereupon the court severally considering said objections to the filing of said exceptions doth overrule the same, and thereupon, by leave of court, the said exceptions of the said parties, and all the other exceptions hereinbefore mentioned, are filed.

Exceptions of the American Locomotive Company to the report of Commissioner E. C. Massie, filed on the 28th day of March, 1905.

283 Chancery Court of the City of Richmond.

S. H. HAWES & Co. }
 v
W. R. TRIGG Co. }

The American Locomotive Company, by its counsel, respectfully excepts to the report of Commissioner E. C. Massie in the above-named cause, for the following reasons:

Commissioner Massie disallows the claim for \$266.69 on the ground that there was no evidence introduced to show that the supplies furnished were necessary to the operation of the W. R. Trigg Company.

The exceptant respectfully submits that the nature of the supplies indicates their necessity in the operation of the manufacturing plant.

Among other things a certain amount of coke was furnished, and it is respectfully submitted, that if bread be the staff of human life, fuel is the staff of the life of a manufacturing plant.

In addition to the above, this exceptant filed a claim for \$70.50 on account of tin lent the W. R. Trigg Co. There is no reference in the report to this tin, and this exceptant respectfully submits that it should be paid in full for the amount of tin in question.

McGUIRE & RIELY.

Exceptions of the Crocker-Wheeler Company to the report of Commissioner E. C. Massie, filed on the 28th day of March, 1905.

Chancery Court of the City of Richmond.

S. H. HAWES & Co. }
 v. }
 W. R. TRIGG Co. }

The Crocker-Wheeler Company respectfully excepts to the report of Commissioner E. C. Massie of date 28th day of March, 1905, in the above styled cause, because the claim for \$426.49 on the part of 284 this company is disallowed by the commissioner on the ground that there was no evidence introduced to show that the supplies furnished were necessary.

It is respectfully submitted that the nature of the supplies, as set out in the statement of account, filed as exhibit with the deposition, shows that they were necessary in the operation of a manufacturing plant.

McGUIRE & RIELY.

Exceptions of the Morris Machine Works to the report of Commissioner E. C. Massie, filed on the 28th day of March, 1905.

Chancery Court of the City of Richmond.

S. H. HAWES & Co. }
 v. }
 W. R. TRIGG Co. }

The Morris Machine Works respectfully excepts to the report of Commissioner E. C. Massie of date day of in the above styled cause, because the claim for \$1,005 on the part of this company is disallowed by the commissioner on the ground that there was no evidence introduced to show that the supplies furnished were necessary.

It is respectfully submitted that the nature of the supplies, as set out in the statement of the account, filed as exhibit with the deposition, shows that they were necessary in the operation of a manufacturing plant.

McGUIRE & RIELY.

Exceptions of the A. P. Swoyer Company to the report of Commissioner E. C. Massie, filed on the 28th day of March, 1905.

Chancery Court of the City of Richmond.

S. H. HAWES & Co. }
v.
W. R. TRIGG CO. }

The A. P. Swoyer Company excepts to the report filed by
285 Commissioner E. C. Massie in the above styled cause, on the
day of , for the following reasons.

The claim of this exceptant is for \$1,329.17. The commissioner refers to the claim as amounting to \$1,278.22, then declines to allow it because there was no evidence introduced to show that supplies furnished were necessary for the operation of the W. R. Trigg Company.

It is respectfully submitted that the nature of the supplies furnished, as set out in the depositions and statement of account, show that they were necessary to the operation of such a plant.

In addition to this, the commissioner claims that \$1,000 of the above-named amount should not be allowed, because it is represented by note held by this exceptant and not surrendered. It is respectfully submitted that the commissioner's ruling herein is wrong, and this exceptant stands ready to surrender the aforesaid note whenever the court orders it.

McGUIRE & RIELY.

Virginia: In the Chancery Court of the city of Richmond, the
23rd day of May, 1905.

S. H. HAWES & Co., WHO SUE, ETC., }
v.
WILLIAM R. TRIGG COMPANY AND OTHERS. }

Extract from decree of May 23, 1905.

1. This cause this day came on again to be heard upon the papers formerly read, the report of Commissioner Eugene C. Massie, made pursuant to the provisions of the decree entered herein on the 30th day of January, 1905, which said report is dated the 15th day of March, 1905, and filed on the 28th of March, 1905, along with the depositions of witnesses and the exhibits accompanying the same,

filed on said last-mentioned date, and the following exceptions to said report:

(n) The exceptions of the American Locomotive Company, the Crocker-Wheeler Co., The Morris Machine Works, and the A. P. Swoyer Co.;

II-N. And the court considering the exceptions of the American Locomotive Company, The Crocker-Wheeler Co., The Morris Machine Works, and the A. P. Swoyer Co., doth sustain the exceptions of the American Locomotive Co. and establish its claim as a supply lien, except so far as the sum due for tin alleged to have been delivered to the defendant corporation on the 23rd of December, 1902, the evidence establishing that the same was delivered, if at all, after the appointment of the receiver. In like manner the exceptions of the Crocker-Wheeler Co., A. P. Swoyer Co., and of the Morris Machine Works are sustained and said claims are established as supply liens against the defendant company for the amounts and in the order of priority set out in the commissioner's report. The 2nd exception of the A. P. Swoyer Co. is also sustained, said claimant having produced in open court the note executed for a portion of the amount asserted in his supply lien and surrendered the same, to be filed with the papers in this case.

An extract.

Teste:

CHAS. O. SAVILLE, *Clerk.*

Exceptions by U. S. attorney to report No. 4 of Commissioner Massie, filed in court under decree of October 31, 1906.

In the Chancery Court of the city of Richmond.

S. H. HAWES & COMPANY

v.

WILLIAM R. TRIGG COMPANY ET ALS.

} Exceptions.

The undersigned, United States attorney, excepts to so much of Commissioner Massie's report, filed on the 19th day of July, 1906, as relates to the three vessels mentioned therein in which the United States are interested, namely, the dredge "Benyuard," the revenue cutter "Mohawk," and the cruiser "Galveston." These vessels were in process of construction, when the receiver was appointed, under contracts with the United States. After the stipulations mentioned in the report had been filed, the unfinished vessels were turned over under decrees in the cause to agents of the United States, and have since been completed at the cost of the United States, and are now being used in the public service. The commis-

sioner reports that the supply liens in question and certain other claims are, as respects these vessels, paramount to the rights of the United States existing at the time the stipulations were filed, which conclusion, it is respectfully submitted, is erroneous.

I. As to the "Benyuard."

(1) By the express terms of the contract for the construction of the dredge it was agreed that the United States should become the owner of the vessel as the work progressed and was paid for, a feature of the contract which differentiates the present case from the cases mentioned in this connection by the commissioner in his report. Paragraph 210 of the specifications (which form a part of the contract) provides as follows:

"Provided the requirements of these specifications are complied with, ten equal payments will be made, based on the reports of the inspector, the first when the hull and propelling machinery are 10 per cent completed, the second when 20 per cent completed, and so on, the last payment being made when the work is turned over to the United States after successful trial, as required by par. 209," &c.

Paragraph 211, in regard to "Ownership," provides that "all parts paid for under the system of partial payments above specified shall become thereby the sole property of the United States, &c. And by paragraph 212 it was agreed that preceding each partial payment, except the last, the contractor would have the hull and propelling machinery insured against fire and marine risk for and in behalf of the United States. Under this contract, as the report states, the Government had paid, when the receiver was appointed, \$142,550.80. The dredge was then 70 per cent completed, and was, in the language of the contract, "the sole property of the United States." That this was the legal effect of the contract is not only obvious from the terms of the contract, but the point was settled by the Court of Appeals, in construing the contracts, in the Bucyrus case, 51 S. E. Rep., 174; S. C., 104 Va., 79-87.

288 It is true (to be strictly accurate) that the contract construed in that case was the contract entered into on the same day, September 9th, 1901, between the same parties for the construction and installation of the pumping machinery for the dredge; but the provisions of the contract embodied in the attached specifications (paragraphs 64, 65, and 66) relative to payments, ownership, and insurance, were substantially, almost literally, the same as those above quoted from the other contract. Indeed, in regard to ownership, the provision is identically the same; and in that case the Court of Appeals said:

"Under the contract between the United States and the Trigg Company, all parts of the machinery paid for by the Government, under the specified system of partial payments, became thereby the sole property of the United States, and, as already pointed out, this provision formed a part of the contract of the Trigg Company with the Bucyrus Company"; and the cause was remanded to this court to be proceeded in accordingly.

In that case it was ascertained that a balance of \$14,266.67 was due by the Government on account of the pumping machinery, for which a decree was rendered, and which has since been paid by the United States, pursuant to the provisions of the stipulation filed under section 3753 of the Revised Statutes.

So that, in view of the terms of the contracts above mentioned, the case is entirely different from *Clarkson v. Stevens*, 106 U. S., 505, relied on by the commissioner, as in that case the Government did not contract for title as the work progressed, nor even for a lien as payments should from time to time be made. The case is, however, within what in that case was declared to be "the true principle," namely, that in matters of this sort, i. e., in construing shipbuilding contracts, to determine the question of property or ownership, there is no arbitrary rule of construction, but each case must be determined upon its own circumstances, or, in the language of the court, it is a "question of intent, open in every case to be determined upon the terms of the contract and the circumstances attending the transaction."

The same principle was recognized by the Court of Appeals of New York in *Andrews v. Durant*, 11 N. Y., 35, in the passage quoted from the opinion of the court by the commissioner, where it is said:

289 "It is no doubt competent for the parties to agree when and upon what conditions the property in the subject of such a contract shall vest in the prospective owner. * * * The question is simply, What was the contract of the parties? If it was intended that certain parts of the vessel should pass to the defendants as the work progressed and was paid for, it was very easy for the parties to have so provided in the contract in express terms."

Had this rule been applied by the commissioner to the present case, or, in other words, had effect been given to the contract of the parties wherein it is provided in express terms that the property in the vessel should pass to the United States as the work progressed and was paid for, the conclusion, instead of being that no title passed to the United States, must necessarily have been the opposite of that reported, and in conformity, moreover, with the ruling of the Court of Appeals in the *Bucyrus* case.

There is, to be sure, a provision in the contract (clause 4) to the effect that in the event of the failure of the contractor to prosecute the work in accordance with the specifications, the United States might annul the contract. But in that case the title to the "parts paid for" was not to cease or be affected, but the Government was authorized to complete the work, having the right to recover from the contractor any sums that might be expended in so doing in excess of the contract price.

It was also agreed that the contractor should be "responsible for and pay all liabilities incurred in the prosecution of the work for labor and material," upon which provision the commissioner seems to lay a good deal of stress in support of his conclusion. But that was no more than a precautionary measure on the part of the Gov-

ernment (suggested, no doubt, by the result in several of the cases mentioned in the commissioner's report) to provide against controversies like the present, so far as that could be reasonably done by contract stipulations, and at the same time to provide for justice being done to a meritorious class of persons. And as to the requirement that the contractor should give bond with surety for the performance of the contract, that was merely a security in addition to the stipulation for title as the work progressed, and surely the Government was not less interested in having the contract performed than it would have been if there had been no such stipulation.

290 In short, it is submitted that upon the question of ownership, the terms of the contract are, as the Court of Appeals seemed to think, too plain to be misunderstood. The point, indeed, is res judicata.

If this be the correct view; that is to say, if the property in the subject of the contract vested in the United States as the work progressed, that ends this branch of the case, as the "prior lien" given by the supply lien law of Virginia to persons furnishing supplies to a mining or manufacturing company is expressly confined to the "personal property of such company" and can not, therefore, be extended to property which was and is "the sole property of the United States." Code of Virginia, section 2485, as amended; *Milhisser, &c., Co. v. Gallego Mills Co.*, 101 Va., 579, 585-6.

The Trigg Company, as the commissioner states, did not return the unfinished dredge for taxation, which was certainly very proper.

(2) The report, moreover, is erroneous, because, independently of the foregoing considerations, the case, so far as the United States are concerned, is not within the operation of the above-mentioned statute. This objection applies to the report as respects all the vessels in which the United States are interested.

a. It is an established principle, founded not merely upon the notion of prerogative, but upon the idea of legislative intention, that statutes which divest or tend to restrain or diminish any of the rights or interests of the Government do not apply to the Government where it is not expressly or by necessary implication included therein. Thus, in *United States v. Hoar*, 2 Mason, 311, where the question was whether the Massachusetts statute of limitations extended to the transactions of the United States, it was held that it did not, and Mr. Justice Story, in delivering the opinion of the court, observed:

"In general, acts of the legislature are meant to regulate and direct the acts and rights of citizens; and in most cases the reasoning applicable to them applies with very different and often contrary force to the Government itself. It appears to me, therefore, to be a safe rule founded in the principles of the common law that the general words of a statute ought not to include the Government, or affect its rights, unless that construction be clear and indisputable upon the text of the act."

291 This case was cited with approval and followed by the Supreme Court in *Stanley v. Schwalby*, 147 U. S., 508, 515,

where it was held that the United States were not bound by the Texas statute of limitations; and in that case Chief Justice Fuller, speaking for the court, said: "Of course, the United States were not bound by the laws of the State, yet the word 'person' in the statute would include them as a body politic and corporate."

In *United States v. Thompson*, 98 U. S., 486, where a similar question arose, the court said:

"The United States not being named in the statute of Minnesota, are not within its provisions. It does not and can not apply to them. If it did, it would be beyond the power of the State to pass it, a gross usurpation and void. It is not to be presumed that such was the intention of the state legislature in passing the act," &c.

The general principle here invoked was recognized by our Court of Appeals in *Commonwealth v. Ford*, 29 Gratt., 683, and again in *Whiteacre v. Rector*, id., 714, holding that the Commonwealth of Virginia is not embraced in the homestead provision of the Constitution; and on the same principle it was held by the Supreme Court in *United States v. Herron*, 20 Wall., 251, that a debt due to the United States, though it be one as a surety only, is not barred by the debtor's discharge in bankruptcy.

It is true that when the sovereign acquires property which is subject to a lien, the property is taken cum onere. But here when the interests of the United States were acquired, the vessels in question were not subject to liens in favor of other parties.

It is conceded in the report that the contracts of the United States are not within the operation of the state registry laws, and the principle upon which that rule is based is the very principle relied on by exceptant here to show that no right, title, or interest of the United States can be divested or affected by the operation of the supply-lien statute of Virginia. And as that statute does not apply as against the United States, it follows necessarily that the contracts of the United States for the construction of the vessels in question were not made with reference to it.

It is submitted that that statute does not operate so as to injuriously affect the interests of the United States, first, because, as already shown, it was, presumably, not intended to have any such effect; and, secondly, because apart from that question, it can not constitutionally be given such effect.

b That the States have no power to retard, impede, burden or in any manner control or interfere with the operations of the general Government has not been an open question since *McCulloch v. Maryland*, 4 Wheat., 316, was decided. It has been truly said that while the States are not expressly prohibited from interfering with the operations of the general Government, the inhibition comes by necessary implication, their possession of such a power of interference being in irreconcilable antagonism to the sovereign authority which it was the purpose of the Constitution to ordain and establish, and that without the recognition of such a principle the Government

would be totally unable to perform the various duties for which it was created.

The same principle has been recognized by the Supreme Court in regard to interference on the part of the Federal Government with the operations of the state governments. Thus, in *The Collector v. Day*, 9 Wall., 113, it was held that it was not competent for Congress to impose a tax on the salary of a judicial officer of a State, and that consequently a federal statute attempting to do so was to that extent unconstitutional and void; and the same principle has been recognized in numerous cases. See in this connection *Van Brocklin v. State of Tennessee*, 117 U. S., 151; *Andrews v. The Auditor*, 28 Gratt., 115, and cases cited.

In *Briggs v. A Light Boat*, 7 Allen, 297, the Government simply contracted for three vessels to be furnished at a certain time for a stipulated consideration. As in *Clarkson v. Stevens*, there was no provision in this contract for title as the work progressed, nor even for a lien, and when the work was completed, certain supply liens under the Massachusetts statute had attached to the vessels, which were held good as against the United States, although not enforceable after the vessels had passed into the possession of the Government. 11 Allen, 157. As the Government acquired no property in the vessels until their completion, no right was divested by the decision in that case, which is therefore no authority for the finding of the commissioner in the present case. In that case the Government might have protected its interests by suitable stipulations in the contract, but did not do so. In the present case it has done so, which constitutes the difference between the two cases.

293 In *United States v. Maurice*, 2 Brock., 96, it was held by Chief Justice Marshall, sitting in the circuit court, that one of the most important means for carrying on the Government is contract, and that the power of the United States to contract is co-extensive with the duties and powers of government. This proposition, of course, nobody disputes. But if the contracts of the United States are subject to state legislation, or, in other words, if a title or a lien in favor of the United States, subsisting by virtue of a valid contract with the Government, may be divested, postponed, or affected by the operation of a state supply lien statute, the power is practically useless; or, to use the more forcible language of the Supreme Court in *United States v. Snyder*, 149 U. S., 210, 214, "The potential existence of the Government is at the mercy of a state legislation."

(3) As to the suggestion that the Government, by entering into the stipulations mentioned in the report, has submitted itself and the vessel claimed by it to the jurisdiction of the courts, it is enough to say in reply that the language of section 3753 of the Revised Statutes, under which the stipulations were filed, expressly negatives such an idea. That section, after authorizing a stipulation to be entered into, goes on to enact as follows:

"Nothing herein contained shall, however, be considered as recognizing or conceding any right to enforce by seizure, arrest, attach-

ment, or any judicial process, any claim against any property of the United States, or against any property held, owned, or employed by the United States, or by any department thereof, for any public use, or as waiving any objection to any proceeding instituted to enforce any such claim."

It follows, therefore, that no suit can be maintained to assert any lien against the "Benyuard," because, although the dredge had not passed into the possession of the Government when the receiver was appointed, the title thereto had passed to the United States, and it is settled law that for purposes of jurisdiction there is no distinction between suits against the Government directly and suits against its property. *Stanley v. Schwalby*, 147 U. S., 508.

(4) There are no equities recognized by the law in favor of the supply creditors. *United States v. Snyder*, *supra*, was a chancery suit to enforce a lien for internal revenue taxes on certain real estate in Louisiana. The lien was not recorded, as the laws of that State require mortgages or liens to be recorded, and after it had attached, the property was sold to a purchaser for value without notice. The Supreme Court, however, held that those facts constituted no defence, or, in other words, that the case was not affected by the state laws.

So that the contracts for building the vessels here in question have, in law, precisely the same effect as if they had been recorded, or as if the supply creditors had had actual notice of them; and if the tax system of the United States is not subject to the recording laws of the State, so neither in a case like the present within the supply lien law of Virginia. In respect to the dredge, the Government contracted for title, and in respect of each of the other vessels for liens, as the work progressed, all of which, according to the commissioner's report, must by operation of the State law be subordinated to the subsequent claims in question. It is submitted that this cannot be done.

II. As to the "Mohawk."

This vessel, a revenue cutter, was being built for the Treasury Department for the contract price of \$222,270.00. The United States had paid on the contract when the receiver was appointed \$149,437.00, and the vessel was then, according to the evidence for the Government, 80 per cent. completed; according to the evidence of the receiver it was 88 per cent. completed. The commissioner adopted the latter estimate, and to that finding the undersigned excepts.

Among the provisions in the contract for construing the vessel are these: That the vessel would be completed, ready for service, within a given time; that in the event of the failure of the builder to fulfill the contract, the Secretary of the Treasury was authorized to complete the vessel, the builder to pay any excess of the cost of construction over the contract price; that the builder would keep the hull, machinery, &c., insured for the benefit of the Government, the policies to be made payable to the United States; that the Secretary of the Treasury might, in his discretion, make partial payments dur-

ing the progress of the work, not to exceed 75 per cent. of the value of the labor and materials actually furnished and delivered (and not paid for) at the date of any such payment. And then follows this provision:

295 "That a lien shall be, and hereby is, reserved to the United States upon the hull, machinery, fittings, and equipment of said vessel, and the materials on hand for use in her construction, respectively and collectively, for all moneys advanced on account thereof, and that such lien shall commence with the first payment, and shall thereupon attach to the work done and the materials furnished, and shall in like manner attach, from time to time, as the work progresses, and as further payments are made, and shall continue until the completion and acceptance of said vessel."

The lien thus reserved, no matter by what name it may be called, is confessedly a valid lien. The commissioner says it is not a statutory lien, nor a common-law lien, but an equitable lien. Be that as it may, it is a lien, and, upon the authorities cited in connection with the "Benyard," its status cannot be changed or affected by state legislation.

The commissioner, however, concludes, and so reports, that the contract was made with reference to the supply lien law of Virginia, and that, therefore, the lien must be dealt with accordingly. To this view there are at least two answers. In the first place, no officer of the Government had authority to make such a contract; and, besides, it is evident that the contract was made, not with reference to the state law, but in compliance with the joint resolution of Congress of May 5, 1894, which resolution, after authorizing the Secretary of the Treasury to make partial payments upon contracts for the construction of vessels for the Treasury Department, not in excess of 75 per cent of the value of the work done, expressly requires that all such contracts "shall provide for a lien upon such vessels for all advances so made." (28 Stat., 582-583.)

There is here not the slightest indication of an intention that such contracts shall be made with reference to any state law, but quite the contrary; i. e., an intention to prescribe a uniform rule to operate independently of state law. And in this connection, the following extract from the opinion of the court in *Bank of the United States v. Halstead* (10 Wheat. 51, 63) is pertinent:

"An officer of the United States," said the court, "cannot in the discharge of his duty, be governed and controlled by state laws any further than such laws have been adopted and sanctioned by
296 the legislative authority of the United States. And he does not, in such case, act under the authority of the state law, but under that of the United States, which adopts such law."

The present case, it is needless to say, belongs to an entirely different class from that to which *United States v. Bostwick*, 94 U. S., 53, belongs. There one of the points decided was that when the Government rents property, there is an implied obligation, in the absence of an express stipulation on the subject, that the premises will be used

in a reasonable manner, a proposition from which there can be no valid dissent. The broad statement, however, in that connection, in the opinion by Chief Justice Waite, to the effect that the United States, when they contract with their citizens, are controlled by the same laws that govern the citizens in that behalf, went beyond the case before the court, and is, moreover, taken unqualifiedly, not sound, as shown by the cases already cited.

As to the provisions of the contract in the present case requiring the builder to give bond with surety for the performance of the contract, and, further, that prompt payments would be made by the builder to all persons furnishing labor and materials, it is needless to repeat what had been said in regard to similar provisions in the contract for the "Benyuard."

III. As to the "Galveston."

As in the contract for the "Mohawk," so in the contract for the cruiser, a lien was reserved for all moneys paid on account thereof, the lien to commence with the first payment, &c. Without referring in detail to the provisions of the contract, it is enough to say that if the foregoing objections to the report as respects the other two vessels are well founded, it necessarily follows that the conclusion of the commissioner in regard to the cruiser is equally erroneous.

Respectfully submitted.

L. L. LEWIS, *U. S. Attorney.*

I beg leave, furthermore, to unite in the exceptions to the above mentioned report this day filed on behalf of the Virginia Trust Company by Messrs. Christian & Christian.

L. L. LEWIS, *U. S. Attorney.*

OCT. 15, 1906.

297 *Exceptions of Virginia Trust Company to Report No. 4, of Commissioner Massie, filed in court under decree of October 31, 1906.*

S. H. HAWES & CO., WHO SUE, &C.,
v.
WM. R. TRIGG CO. ET ALS. }

The Virginia Trust Company excepts to the report of Commissioner E. C. Massie, filed on July 19th, 1906, in the cause of "S. H. Hawes & Co., who sue, etc., against William R. Trigg Company, etc.," in the Chancery Court of the city of Richmond, Virginia, in the following particulars and upon the following grounds:

I.

The Virginia Trust Company excepts to the finding of said report that the assignment of the reserve on the "Galveston," mentioned in said report, was and is null and void; and also in so far as the said report finds that the said assignment was and is inferior and subordinate to supply claims against said William R. Trigg Company;

and also in so far as said report finds that the said assignment was prohibited by the contract between the United States Government and the William R. Trigg Company for the construction of the "Galveston;" and also in so far as the said report finds that the agreement between the William R. Trigg Company and the Virginia Trust Company for the assignment of said reserve on the "Galveston" constituted an assignment of the contract for the construction of the "Galveston," or of any interest in that contract; and said report is excepted to in finding that the said reserve on the "Galveston" was not an ascertained claim at the time of the assignment or assignments thereof to the Va. Trust Company.

II.

The Virginia Trust Company also excepts to the findings of said report to the effect that the title, interest, lien, and property of the United States in and to the "Benyuard," the "Galveston," and the "Mohawk," and of each of the said vessels, and the materials
298 set apart and assigned thereto, are subordinate and inferior to the lien acquired by persons who may have furnished supplies and materials to the William R. Trigg Company under the statutes of Virginia in relation to the furnishing of labors and supplies. In making this exception the Virginia Trust Company states that the United States claims a large sum of money as due to it by reason of the breach of the bond for the construction of the aforesaid vessels on which this exceptant is surety; and this exceptant is, therefore, interested in the findings of Commissioner Massie, to which it excepts as aforesaid.

And the Virginia Trust Company excepts to the aforesaid findings of Commissioner Massie upon the ground that the statute of Virginia giving liens to persons furnishing labor and supplies to manufacturing corporations is void, because it is in conflict with the provisions of the Fourteenth Amendment to the Constitution of the United States, section 1, which declares:

"Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Because said statute, as construed by Commissioner Massie, constitutes class legislation, and is invalid because in conflict with the provision of the Fourteenth Amendment to the Federal Constitution above quoted, because said statute, as construed by Commissioner Massie, deprived the William R. Trigg Company and the United States of both property and liberty without due process in declaring that the William R. Trigg Company should be unable to contract for, give, and make, and the United States to contract for and accept, a conveyance of or contract for an interest in or lien upon personal property except subject to a future lien in favor of persons furnishing supplies to the said William R. Trigg Company after the date of the making of such contract for the creation of a lien or the conveyance of an interest between said William R. Trigg Company and the

United States. Such a statute would deprive persons of both liberty and property in prohibiting the right to use their property and to make a contract in relation thereto except in subordination to liens which might or might not thereafter arise; and such construction would, if adopted, render the statute contrary to the Four-
 299 teenth Amendment to the Federal Constitution as well as to the provisions of the constitution of Virginia; and such construction is one that should not be adopted by the courts.

The Virginia Trust Company excepts to the findings of the commissioner that the title of the United States to the "Benyuard," the "Galveston," and the "Mohawk" and the liens of the United States thereon are subordinate to the lien of supply claims mentioned in said report, because the construction of the Virginia statute in reference to supply claims, referred to by Commissioner Massie, is unsound and incorrect; also because the William R. Trigg Company was not a manufacturing company within the meaning of said statute; and also because the said boats, and each of them, were in the possession of agents of the Federal Government at the time when this suit was brought and at the time the receiver herein was appointed; and upon that ground this court has no power or jurisdiction to determine as against the United States any of the said questions.

The Virginia Trust Company also excepts to the finding of Commissioner Massie that no lien in favor of the United States can be held to arise upon vessels constructed for the Treasury Department of the United States Government under the general resolution of Congress passed on May 5th, 1894.

The Virginia Trust Company also excepts to the finding of Commissioner Massie to the effect that the lien reserved in favor of the United States Government upon the "Galveston" and the "Mohawk" was not good and effective as a common law lien, or as a statutory lien, or as an equitable lien, in opposition to the rights of the creditors of the William R. Trigg Company asserting claims in this cause.

The Virginia Trust Company excepts to the finding of the said Commissioner Massie to the effect that any title accruing to the United States under the contract for the construction of the "Benyuard" was subject to the supply liens; and also in so far as it finds that the United States had not acquired such possession of the "Benyuard" as protects it from the process of the court.

The Virginia Trust Company excepts to the findings of Commissioner Massie to the effect that the supply liens in this case are superior to the lien upon the "Mohawk" and the materials set aside therefor, reserved in favor of the United States in the contract for the construction of the "Mohawk;" and that the said vessel re-
 300 mained the property of the William R. Trigg Company without valid lien in favor of the United States for its partial payments on account thereof and subject to the liens of supply creditors asserted in this case and also to the liens of general creditors.

The Virginia Trust Company excepts to the findings of Commissioner Massie that the supply liens in this case are superior to the

lien in favor of the United States reserved in the contract for the construction of the "Galveston," and to so much of Commissioner Massie's report as finds that no title passed to the United States in the incomplete vessel by reason of partial payments thereon, and that the title to said vessel remained in the William R. Trigg Company, and is subject to the liens matured in this cause, as well as to the claims of general creditors, ahead of, or superior to, the rights, interests and liens of the United States.

The Virginia Trust Company excepts to the report of commissioner in so far as it finds that the reserve on the "Mohawk" belongs either to the supply creditors or to the general creditors of the William R. Trigg Company, and so far as the said report fails to declare that the said reserve belongs to the Government of the United States, and should be applied by the United States as a credit upon the liabilities of the William R. Trigg Company to it upon the contracts for the construction of the "Galveston" and the "Benyuard" and in exoneration of the Virginia Trust Company as surety on the bonds for the construction of the two last-named vessels.

The Virginia Trust Company excepts to the said report in so far as it holds or reports that the reserve upon the "Galveston" belongs to the supply creditors or general creditors of the William R. Trigg Company, and in so far as it fails to report that said reserve belongs to the United States Government, and should be applied by said Government to the liabilities of the William R. Trigg Company to it in exoneration of any alleged liability of the Virginia Trust Company as surety as aforesaid.

The Virginia Trust Company excepts to the report of Commissioner Massie in so far as it finds that any reserve upon the "Benyuard," or any payment into this court made by the United States on account of the Bucyrus machinery, belongs to the supply creditors or general creditors of the William R. Trigg Company, and in so far as it fails to report that all such moneys should have been held, and

301 were entitled to be held, by the United States Government as a credit against any liabilities of the William R. Trigg Company to the United States on account of the failure to perform and execute the contracts in relation to building the "Galveston" or the "Benyuard," or the pumping machinery for the "Benyuard," in exoneration of any alleged liability of the Virginia Trust Company as surety as aforesaid.

VIRGINIA TRUST CO.,
By CHRISTIAN & CHRISTIAN,
Their Counsel.

OCTOBER 15, 1906.

The Virginia Trust Co. also united in the exceptions filed this day by Hon. L. L. Lewis, U. S. Attorney.

VIRGINIA TRUST CO.,
By CHRISTIAN & CHRISTIAN,
Their Counsel.

OCTOBER 15, 1906.

Exceptions of Virginia Trust Company, trustee, et als., to report of Commissioner E. C. Massie, No. 4, filed in court under decree of October 31, 1906.

Virginia: In the Chancery Court of the city of Richmond.

S. H. HAWES & CO., WHO SUE, ETC.,

v.

WILLIAM R. TRIGG CO. & OTHERS.

EXCEPTIONS OF THE VA. TRUST CO., TRUSTEE, & JAS. N. BOYD & ALS.

The Virginia Trust Company, trustee under four certain assignments from the defendant, William R. Trigg Company, dated, respectively, October 10th, 1902; November 17th, 1902; November 19th, 1902; and November 25th, 1902, for the benefit of James N. Boyd, Robert S. Boshier, Thomas Atkinson, S. D. Crenshaw, J. J. Montague, and H. M. Flagler, and the said James N. Boyd, Thomas 302 Atkinson, S. D. Crenshaw, J. J. Montague, H. M. Flagler, and George L. Christian, Thomas C. Williams, jr., and Mattie E. Boshier, executors of Robert S. Boshier, deceased, beneficiaries under said assignments, except to the report of Commissioner E. C. Massie, dated April 12th, 1906, and filed in this cause on July the 19th, 1906, in so far as the said report finds that the above assignments of what are called the "loss claims" are null and void, and contrary to section 3477 of the Revised Statutes of the United States; and also in so far as the said report finds that said "loss claims" constitute only an appeal to the generosity of the United States Government and not a valid, equitable claim.

And these exceptants further except to the findings of said commissioner in his said report upholding the validity of the statute of Virginia giving liens to persons furnishing labor and supplies to manufacturing corporations, and this exception is based upon the ground that the said statute is void because it is in conflict with the provisions of the Fourteenth Amendment to the Constitution of the United States, section 1, and because said statute, as construed by Commissioner Massie, constitutes class legislation and is invalid because in conflict with the said section of the Fourteenth Amendment to the Federal Constitution, as well as with the provisions of the Constitution of Virginia.

And these exceptants further except to said report because it is not proper, in the present condition of said "Loss Claims," for the court to decide the question of the validity of said assignments, as such a decision would be premature, and it may be that no occasion will ever arise requiring such a decision.

THE ABOVE EXCEPTANTS,

By CHRISTIAN & CHRISTIAN
and J. JORDON LEAKE,

Their Counsel.

OCTOBER 15th, 1906.

Exceptions of Savings Bank of Richmond to report of Commissioner E. C. Massie, filed in court under decree of October 31, 1906.

303 Virginia: In the Chancery Court of the city of Richmond, the 15th day of October, 1906.

S. H. HAWES & Co., &C.,
v.
WM. R. TRIGG Co. & ALS. } Exception.

The Savings Bank of Richmond excepts to the report of Commissioner E. C. Massie, dated April 12, and filed July 19, 1906, in this cause—

1. Because the said commissioner failed to report upon the liability of the United States of America for the contract price of the cruiser "Galveston," whereas he should have found that the U. S. Government was bound to the defendant Trigg Co. in the full amount of said contract price by reason of the fact that said cruiser "Galveston," though incomplected, was taken over and accepted by the Government before the time within which said cruiser was to be finished.

2. Because the said commissioner reports that the assignment to this exceptant of the vouchers and payments under the "Benyuard" contract is invalid; whereas he should have sustained such assignment as valid and binding as to all persons.

Resp'y submitted.

A. W. PATTERSON,
For Savings Bank.

Exceptions of the First National Bank of Richmond, Virginia, to report of Commissioner Eugene C. Massie, No. 4, filed in court under decree of October 31, 1906.

S. H. HAWES & COMPANY, WHO SUES, ETC., COMPLAINANTS,
v.
W. R. TRIGG COMPANY AND OTHERS, DEFENDANTS. }

304 Exceptions to the report of Commissioner Massie, No. 4, filed July 19, 1906, on behalf of the first National Bank of Richmond, Virginia.

The First National Bank of Richmond, Virginia, by counsel, excepts to the said report upon the following grounds, to wit:

First. Because said commissioner finds that the assignment by said W. R. Trigg Company to said bank of its, the said Trigg Company's claim against the United States arising out of its contract to build for said United States the revenue cutter "Mohawk," and the power of attorney to said bank to collect the reserve held to await the completion of said cutter, are void under section 3477, Revised Statutes of the United States; and even if not so void, the general

claim of said bank, as well as said assignment and power of attorney, are subordinate to all liens duly acquired for labor and supplies furnished the said W. R. Trigg Company under the terms of the Virginia statute, Code of Virginia, section 2485.

Second. Because the findings of said commissioner sustain the constitutionality of the labor and supply lien law of Virginia, whereas said law is in conflict with section 1 of article fourteen of the Constitution of the United States and with the constitution of Virginia.

Third. Because said commissioner finds that the said W. R. Trigg Company is a "manufacturing company" within the meaning and operation of said Virginia labor and supply lien statute, whereas he should have found that said statute did not apply to such a company.

Fourth. Said bank unites in the second exception of the Virginia Trust Company to said report of said commissioner.

GEO. BRYAN,
CHRISTIAN & CHRISTIAN,
Counsel First National Bank of Richmond.

Exceptions of the Standard Oil Company of New York, to report No. 4 of Commissioner Eugene C. Massie, filed in court under decree of October 31, 1906.

Virginia: In the Chancery Court of the city of Richmond.

305 S. H. HAWES & COMPANY, WHO SUE, &C.,
v.
WILLIAM R. TRIGG COMPANY ET AL. }

The exceptions of the Standard Oil Company of New York to the report No. 4 of Commissioner in Chancery Eugene C. Massie, which report is dated April 12, 1906, and was filed in the above-entitled cause on the 19th day of July, 1906.

The said exceptant, the Standard Oil Company of New York, excepts to the above-mentioned report of Commissioner Massie in the following particulars:

First. For that the said commissioner, in his said report, finds and reports that no title to the unfinished oil tank steamship "Lucas," its engines, its hull, or its assigned material, or to any part thereof, passed from the William R. Trigg Company to the said Standard Oil Company of New York under the contract for the construction of said vessel by the said William R. Trigg Company as against the rights of the creditors of said last-named company.

Second. For that the said commissioner in his said report finds and reports that the Standard Oil Company of New York has no right or title to the \$35,000, or to any part thereof, on deposit in the State Bank of Virginia to the credit of the court in this cause rep-

resenting the proceeds of the sale of the said unfinished oil tank steamship "Lucas," including its hull, engines, and assigned material.

Third. For that the said commissioner in his said report finds and reports that the said sum of \$35,000 so on deposit in the State Bank of Virginia is subject to the supply liens duly matured and reported in this cause, and also to the rights of general creditors of the said William R. Trigg Company.

STANDARD OIL CO. OF N. Y.,
By COKE & PICKRELL, *Its Counsel*.

Exceptions of Pennsylvania Railroad Company to report No. 4 of Commissioner Eugene C. Massie, filed in court under decree of October 31, 1906.

306 In the Chancery Court of the City of Richmond, Va.

S. H. HAWES & COMPANY, COMPLAINANTS,
v.
THE WILLIAM R. TRIGG CO. & OTHERS, DEFENDANTS. }

Exceptions taken by the Pennsylvania Railroad Company to the Report No. 4 of Eugene C. Massie, one of the commissioners of this court, made on the 19th day of July, 1906, under decrees rendered in this cause.

First exception. For that the said commissioner has in and by his said report certified that the title to the unfinished tugboats, "Bristol," Hull No. 20, and "Chester," Hull No. 21, did not pass to the Pennsylvania Railroad Company, but remained in the William R. Trigg Company, subject to the supply liens matured and reported in this cause, and to the rights of other creditors under the Virginia statutes. Whereas, he should have certified and reported to this court, that the title to the hulls and machinery of the said unfinished tug boats, together with the material intended for their completion and assigned to said vessels respectively, passed to and vested in the Pennsylvania Railroad Company.

Second exception. For that the said commissioner has in and by his report certified that the purchase money received for said tugboats and now under the control of the court in this cause, is liable to the said liens and claims of the said other creditors. Whereas, he should have certified and reported to this court that the purchase money received for said tugboats and machinery, and the material intended for their completion and assigned to said vessels respectively is the property of the Pennsylvania Railroad Company and should be paid to it.

In all of which particulars the report of the said commissioner is, as the said Pennsylvania Railroad Company is advised, erroneous, and it therefore appeals therefrom to the judgment of this court.

FRANCIS L. SMITH,
Solicitor for Pennsylvania Railroad Company.

- 307 *Exceptions of New York, Philadelphia & Norfolk Railroad Company to Report No. 4 of Commissioner Eugene C. Massie, filed in Court under Decree of Oct. 31, 1906.*

In the Chancery Court of the city of Richmond, Virginia.

S. H. HAWES & COMPANY, COMPLAINANTS,

v.

THE WILLIAM R. TRIGG COMPANY AND OTHERS, DEFENDANTS.

Exceptions taken by the New York, Philadelphia & Norfolk Railroad Company to the report of Eugene C. Massie, one of the commissioners of this court, made on the 19th day of July, 1906, under decrees rendered in this cause.

First exception. For that the said commissioner has in and by his said report certified that the title to the unfinished tug boat, known as "Hull 23, Cape Charles," did not pass to the New York, Philadelphia & Norfolk Railroad Company, but remained in the William R. Trigg Company, subject to the supply liens matured and reported in this cause, and to the rights of other creditors under the Virginia statutes. Whereas he should have certified and reported to this court that the title to the hull and machinery of the said unfinished tug boat known as "Hull 23, Cape Charles," together with the material intended for its completion and assigned to said vessel, passed to and vested in the New York, Philadelphia & Norfolk Railroad Company.

Second exception. For that the said commissioner has in and by his said report certified that the purchase money received for said tug boat and now under the control of the court in this cause, is liable to the said liens and claims of the said other creditors. Whereas he should have certified and reported to this court that the purchase money received for said tug boat and machinery, and the material intended for its completion and assigned to said vessel if the property of the New York, Philadelphia & Norfolk Railroad Company and should be paid to it.

In all of which particulars the report of the said commissioner, is, as the said New York, Philadelphia & Norfolk Railroad Company is advised, erroneous, and it therefore appeals therefrom to the judgment of this court.

FRANCIS L. SMITH,

- 308 *Solicitor for the New York, Philadelphia & Norfolk Railroad Co.*

Stipulations, dated June 22, 1903, with respect to cruiser Galveston, filed in court under decree of June 22nd, 1903.

In the Chancery Court of the City of Richmond.

S. H. HAWES & COMPANY	}
v.	
WM. R. TRIGG COMPANY ET ALS.	

Stipulation for the discharge of certain property of the United States.

Whereas by an act of Congress approved March 3, 1899, entitled "An act making appropriations for the Naval Service for the fiscal year ending June 30, 1900, and for other purposes," it was provided, among other things, for the purpose of further increasing the naval establishment of the United States that the President should be authorized to have constructed by contract six protected cruisers, and that the contracts for the construction of each of said vessels should be awarded by the Secretary of the Navy to the lowest responsible bidder; and

Whereas thereafter, to wit: On the 14th day of December, 1899, under and pursuant to said act of Congress, a contract, in writing, was duly made and entered into by and between the William R. Trigg Company, a corporation created under the laws of Virginia, and doing business at the city of Richmond, in said State, party of the first part, and the United States of America, by the Secretary of the Navy, party of the second part, for the building and construction of a protected cruiser, designated and described as cruiser No. 17, "Galveston," a copy of which said contract in writing is hereto attached marked "Exhibit A," and hereby made a part of this stipulation; and

Whereas thereafter, and under and pursuant to the terms and conditions of said contract, in writing, the said William R. Trigg
 309 Company entered upon the work of building and constructing the said cruiser "Galveston" in the ship yards of said company at Richmond, Virginia, and from time to time as the work on said cruiser progressed the said company received payments of large sums of money of said contract, amounting in the aggregate to \$698,514.45; and

Whereas it is expressly provided in the 8th paragraph of said contract, in writing, that the United States shall have a lien upon said vessel and the materials on hand for use in the construction thereof, respectively and collectively, for all moneys paid on account thereof by said United States to said William R. Trigg Company, which lien shall commence with the first payment, and shall thereupon attach to the work done and materials furnished, and shall in like manner attach from time to time as the work progresses, and as further payments are made, and shall continue until it shall have been properly discharged. And

Whereas thereafter, to-wit, on the 23d day of December, 1902, the chancery court of the city of Richmond, Virginia, appointed one Lilburn T. Myers as receiver of said William R. Trigg Company, who thereupon took possession of all the real and personal property belonging to said William R. Trigg Company, and who has since said date been acting as the receiver of said company under and pursuant to said appointment. And

Whereas ever since the appointment of said receiver the said William R. Trigg Company and the said Lilburn T. Myers, receiver of said company, have totally failed and neglected to go forward with the work and make progress toward the completion of said cruiser, as required by the terms and conditions of said contract, though often requested by the United States so to do. And

Whereas on the 14th day of May, 1903, under and pursuant to paragraph 12 of said contract, the Secretary of the Navy, in consequence of the failure and omission of said company and of said receiver to go forward with the work and make satisfactory progress toward the completion of said cruiser, declared said contract forfeited, and duly notified said company and said receiver and the surety on the bond of said company to that effect. And

Whereas thereafter, and prior to the 21st day of May, 1903, the Secretary of the Navy caused to be taken, made, and filed a complete statement and inventory of all the work done and commenced
 310 in, upon, or about said vessel, and of all materials on hand applicable thereto, and caused the same to be valued by a board consisting of five persons, to wit: Thomas O. Selfridge, rear-admiral, U. S. N.; F. L. Fernald, naval constructor, U. S. N.; Emil Theiss, lieutenant, U. S. N.; C. F. Preston, lieutenant, U. S. N.; Wm. G. Groesbeck, assistant naval constructor, U. S. N., each qualified by knowledge and experience for the discharge of their duties, and each of whom were theretofore duly appointed as members of such board by the Secretary of the Navy, and which board, on being so appointed, did proceed without delay to examine said vessel and such work and material, and to ascertain and declare the fair market value thereof, including a reasonable profit upon so much of the work as had been satisfactorily performed at the time of the forfeiture of said contract; and did thereafter, to-wit, on the 21st day of May, 1903, make a report and finding to the Secretary of the Navy, who thereupon duly approved the same. And

Whereas there is hereto attached, and hereby made a part of this stipulation, a certified copy of the report and findings of said board of appraisal, marked "Exhibit B," showing in detail the amount of work done and materials furnished in the building and construction of said unfinished cruiser "Galveston," the property of the United States, and the appraised valuation thereof; and also showing in detail all supplies and materials on hand in the ship yard of said company applicable to the completion of said cruiser "Galveston," all of which is the property of the United States, and in which the

United States have and claim an interest, and the appraised valuation of each and every item of such materials at the fair market value thereof. And

Whereas upon the receipt of the report and finding of said board, and the approval thereof by the Secretary of the Navy, said Secretary of the Navy, under and pursuant to paragraph 13 of said contract, "Exhibit A," elected to proceed to complete said vessel in accordance with the contract, drawings, plans, and specifications, and elected and decided to use for that purpose all suitable materials on hand, and included in said inventory made and filed as aforesaid. And

Whereas the United States now claim and assert title to said vessel, in its present incomplete and unfinished condition, and title to all said materials found by said board to be on hand applicable to the completion of said vessel, and that the title to said vessel and
311 such materials has vested in and become the absolute property of the United States under and by virtue of the terms and provisions of said contract and the acts performed thereunder by the respective parties thereto. And

Whereas said unfinished protected cruiser, and said materials on hand applicable thereto, as shown by said inventory, "Exhibit B," are now claimed to be owned by the United States, and the United States now have and claim an interest therein. And

Whereas between the 23rd day of December, 1902, and the 14th day of May, 1903, certain creditors of the said William R. Trigg Company made and filed claims and demands against said company and its said receiver in the office of the clerk of the chancery court of the city of Richmond, Virginia, and during said time certain lien creditors made and filed their claims, demands, and liens against said company and its said receiver and the property and assets belonging to said company in the hands of said receiver, in the office of the clerk of the chancery court in and for the city of Richmond, Virginia. And

Whereas such creditors, or some of them, now claim and assert some right, title, or interest in and to the property of the United States, and in which the United States has a claim and interest, to-wit: the protected cruiser "Galveston" in its unfinished condition, and the supplies and materials on hand and applicable thereto, as shown by said inventory Exhibit "B." And

Whereas the United States is desirous of protecting any and all such creditors in any claims, demands, or liens, which they, or any of them, may have in and to said property or any part thereof, provided it should ultimately be determined that such creditors, or any of them, hold any liens, claims, or demands against said property which are prior to and superior to the rights of the United States in and to said property. And

Whereas the Secretary of the Treasury of the United States, on the 20th day of June, 1903, under and pursuant to the authority contained in section 3753 of the Revised Statutes of the United States, directed the Solicitor of the Treasury of the United States to cause

a stipulation to be entered into by the United States attorney for the Eastern District of Virginia for the release and discharge of the property hereinbefore described, owned by the United States, and in which the United States have and claim an interest, and
 312 which said property was then and there, and now is, located in the Eastern District of Virginia, to wit, in the city of Richmond, Henrico County, Virginia. All of which more fully appears in the original letter from the Secretary of the Treasury of the United States to the Solicitor of the Treasury, hereto annexed marked "Exhibit C" and hereby made a part of this stipulation. And

Whereas the Solicitor of the Treasury of the United States, acting under instructions contained in said letter, "Exhibit C," from the Secretary of the Treasury, did, on the 20th day of June, 1903, require and direct the United States attorney for the Eastern District of Virginia, to wit, L. L. Lewis, to make, enter into, and file a stipulation and understanding in writing, in the chancery court of the city of Richmond, Virginia, in accordance with the provisions contained in sections 3753 and 3754 of the Revised Statutes of the United States, for the release and discharge of the property hereinbefore described owned by the United States, and in which the United States have and claim an interest, free from all claims and demands of every nature and description, whether arising by virtue of said receivership, or otherwise; and all of which more fully appears in the original letter from the Solicitor of the Treasury to the said United States attorney, hereto annexed, marked "Exhibit D," and hereby make a part of this stipulation. And

Whereas said chancery court of the city of Richmond, said Lilburn T. Myers, the receiver of the William R. Trigg Company, of Richmond, Virginia, and divers creditors of said company have seized, and are now holding, arresting, and claiming said property, to wit, the unfinished protected cruiser, No. 17, "Galveston," and certain materials on hand to the completion of said cruiser, as and for security and satisfaction of certain alleged liens, claims, and demands made against such property in a judicial proceeding, to wit, the above-entitled cause, heretofore instituted in the chancery court of said city of Richmond, under and by virtue of the laws of the State of Virginia.

Now, therefore, the United States attorney for the eastern district of Virginia, L. L. Lewis, being hereunto especially authorized by the Secretary of the Treasury and the Solicitor of the Treasury of the United States, hereby makes and enters into this stipulation and undertaking for and in behalf of the United States, and
 313 files the same in the Chancery Court in and for the city of Richmond, in the State of Virginia, and in the above-entitled cause, for the release and discharge of the said unfinished protected cruiser No. 17, "Galveston," and the materials on hand applicable thereto, as shown by said inventory "Exhibit B," all of said property being claimed as owned by the United States, and in which the United States have and claim an interest, and the condition of this

stipulation and undertaking is that if a final judgment is hereafter given and awarded in the court of last resort to which the Secretary of the Treasury may deem it proper to cause such proceedings, by which said property is at present held, to be carried, affirming the claim or claims for security or satisfaction, for which such proceedings have been instituted, and the right of any person or persons, firms or corporations asserting the same to enforce against said property by means of such proceedings, notwithstanding the claims of the United States thereto, such final judgment shall be deemed to all intents and purposes as a full and final determination of the rights of such person or persons, firms or corporations, and shall entitle such person or persons, firms or corporations as against the United States to such rights as he or they would have had in case the possession of such property had not been changed, and if such claim or claims is or are for the payment of money, and the same shall be by such judgment found to be due, the presentation of a duly authenticated copy of the record of such judgment and proceedings shall be sufficient evidence to the proper accounting officers of the United States for the allowance thereof, and the same shall thereupon be allowed and paid out of any moneys in the Treasury of the United States not otherwise appropriated. Provided, that the amount to be so allowed and paid shall not exceed the value of the interest of the United States in and to the property in question at the time when such property is released and discharged under and by virtue of the making and filing of this stipulation and undertaking.

Nothing in this stipulation contained shall be considered or construed as recognizing or conceding any right to any person or persons, firms, or corporations to enforce by seizure, arrest, attachment, or any judicial process whatsoever, any claim or claims against any property of the United States, or against any property held, owned, or employed by the United States, or by any department thereof, for any public use, or as waiving in any manner whatsoever any
 314 objection to any proceeding instituted by any person or persons, firms or corporations to enforce any such claim or claims.

And it is further hereby expressly declared that nothing in the above stipulation contained shall be construed or considered as in any manner affecting or releasing any existing claim or claims, or any claim or claims which may hereafter accrue in favor of the United States as against said William R. Trigg Company and its surety, The Virginia Trust Company, or as affecting or releasing any claim or claims existing, or hereafter accruing, in favor of the United States against the receiver of said company, or any property of the said William R. Trigg Company now held by such receiver; and it is further declared that the above stipulation and undertaking is entered into by the authority and under the direction of the Secretary of the Treasury under and pursuant to the provisions of sections 3753 and 3754 of the Revised Statutes of the United States; the sole and express purpose in making the same being to secure the immediate release and discharge of said unfinished cruiser, and the mate-

rials on hand applicable to her completion, and at the same time to secure to any and all claimants, who may now have an interest in or to the property so discharged, released, and surrendered into the possession of the United States, the fullest possible protection and security in and to their respective rights and claims, if any should hereafter be determined to exist, as contemplated by the sections of the Revised Statutes above referred to, and to preserve intact and unaffected for such claimants all the rights and remedies which they would have had in case said property had not been taken, but no other or additional rights are intended to be given or conceded.

This 22d day of June, A. D. 1903.

L. L. LEWIS,

United States Attorney for the Eastern District of Virginia, being hereunto expressly authorized and required to sign this stipulation by the Secretary of the Treasury and the Solicitor of the Treasury of the United States.

"EXHIBIT A"—CRUISERS NOS. 14 TO 19.

315 *Contract for the Construction of a Protected Cruiser.*

CRUISER NO. 17.

Contract, of two parts, made and concluded this fourteenth day of December, A. D. 1899, by and between William R. Trigg Company, a corporation created under the laws of the State of Virginia, and doing business at Richmond, in said State, represented by the vice-president of said company, party of the first part, and the United States, represented by the Secretary of the Navy, party of the second part:

Whereas the act entitled "An act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred, and for other purposes," approved March 3, 1899, authorized the construction of six protected cruisers of about two thousand five hundred tons trial displacement, to be constructed in accordance with certain provisions contained in the naval appropriation act of May 4, 1898, and in the act entitled "An act to increase the naval establishment," approved August 3, 1886; to be in all their parts of domestic manufacture; and

Whereas, after due advertisement, the proposal of the said party of the first part for the construction of the hull and machinery of one of said vessels, which, for the purposes of this contract, is designated and known as "Cruiser No. 17, Galveston," has been duly accepted by the Secretary of the Navy; and

Whereas the drawings, plans, and specifications required by the said acts have been duly provided, adopted, and approved in accordance with the provisions of said act of March 3, 1899:

Now, therefore, this contract witnesseth that, in consideration of the premises, and for and in consideration of the payments to be

made as hereinafter provided, the party of the first part, for itself and its successors and assigns, and its legal representatives, does hereby covenant and agree to and with the United States as follows, that is to say:

First. The party of the first part will, at its own risk and expense, construct, in accordance with the provisions of the acts of Congress relating thereto, and in conformity with the aforesaid drawings, plans, and specifications, one protected cruiser of about 316 three thousand two hundred tons trial displacement, with fittings as specified, such vessel to be constructed of steel or domestic manufacture, and to be provided and fitted with machinery, engines, and boilers, also of domestic manufacture, complete in all their parts, appurtenances, and spare parts, and in all respects as described in the annexed drawings, plans, and specifications, and in the acts of Congress above referred to, and will deliver the same at the navy yard, Norfolk, Virginia, to such person as the Secretary of the Navy may designate; it being, however, expressly understood and agreed that if any article or thing included in, or covered by, the drawings, plans, and specifications aforesaid shall be found, during the prosecution of the work under this contract, to be not produced or manufactured in the United States, and if, after reasonable effort, it shall be found impracticable to obtain the same as an article of domestic manufacture, then, and in such case, provision shall be made, by or with the approval of the Secretary of the Navy, for such alteration in the drawings, plans, and specifications, or for the adoption of such new or different device or plan as may be found necessary in order to carry out and complete this contract, subject, as to increased or diminished compensation by reason of such change, to the conditions applicable to changes as expressed in the second clause of this contract.

Second. The construction of said vessel, the word vessel as used here and hereafter throughout this contract being intended to include everything covered by the drawings, plans, and specifications above referred to, shall conform in all respects to and with said drawings, plans, and specifications, which are hereto annexed and shall be deemed and taken as forming a part of this contract with the like operation and effect as if the same were incorporated herein. No omission in the drawings, plans, or specifications of any detail, object, or provision necessary to carry this contract into full and complete effect, in accordance with the object and intent of the acts of Congress above referred to, shall operate to the disadvantage of the United States, but the same shall be satisfactorily supplied, performed, and observed by the party of the first part, and all claims for extra compensation by reason of, or for, or on account of, such extra performance, are hereby and in consideration of the premises expressly waived; and it is hereby further provided, and this 317 contract is upon the express condition, that the drawings, plans, and specifications aforesaid may be changed, and that

such alterations as are not contrary to law may be made in this contract, by the party of the second part, but no such changes shall be made in any respect when the cost thereof shall, in the execution of the work, exceed five hundred dollars (\$500), except upon the written order of the Secretary or Acting Secretary of the Navy; that, if changes are thus made, the actual cost thereof, and the damage, if any, caused thereby, shall be ascertained, estimated, and determined by a board of naval officers, appointed by the Secretary of the Navy, and that the party of the first part shall be bound by the determination of said board, or a majority thereof, as to the amount of increased or diminished compensation which the said party of the first part shall be entitled to receive, if any, in consequence of such change or changes.

Third. The materials and workmanship used and applied in the construction of the vessel herein contracted for, in details and finish, shall be first-class and of the very best quality, and shall, from the beginning to the end of the work, be subject to the inspection of the Secretary of the Navy; it being hereby understood, covenanted, and agreed that the said Secretary may appoint suitable inspectors, to whom the party of the first part shall furnish such samples of said materials, and such information as to the quality thereof and the manner of using the same, as may be required, and also any assistance such inspectors may require in determining the weight and quality of steel and other metals, and of wood and other materials, either used or intended for use in the construction of the vessel, and that the inspectors may, with the approval of the Secretary, peremptorily reject any unfit material or forbid the use thereof. The inspectors shall at all times during the progress of the work have full access thereto, and the party of the first part shall furnish them with full facilities for the inspection and superintendence of the same.

Fourth. The steel and other material to be used in the construction of the vessel herein contracted for shall conform to the specifications for inspection of material for use in the construction of the hulls and the machinery of vessels for the United States Navy approved by the Secretary of the Navy, which specifications are annexed to and form a part of this contract.

Fifth. The party of the first part will, at its own expense, 318 prepare such plans or drawings as may be necessary during the progress of the work, and will submit the same to the Navy Department for approval before the material is ordered or the work commenced.

Sixth. The party of the first part, in consideration of the premises, hereby covenants and agrees to hold and save the United States harmless from and against all and every demand or demands of any nature or kind for or on account of the adoption of any plan, model, design, or suggestion, or for or on account of the use of any patented invention, article, or appliance which has been or may be adopted or used in or about the construction of said vessel or any part thereof, under this contract, and to protect and discharge the Government

from all liability on account thereof, or on account of the use thereof, by proper release from patentees, or otherwise, and to the satisfaction of the Secretary of the Navy.

Seventh. The vessel herein contracted for, and all materials and appliances provided for and used, or to be used, in the construction thereof, shall be kept duly insured against fire and marine risks, settling of stocks, breakage of ways, and risks of launching, which insurance shall be renewed and increased, from time to time, by and at the expense of the party of the first part, until the preliminary or the conditional acceptance of the vessel, the loss, if any, to be stated in the policies as payable to the Secretary of the Navy; the insurance to be effected in such manner and in such companies as shall be approved by him, and in an amount to be fixed, from time to time, by him, not exceeding the amount of the payments made under this contract.

Eighth: The vessel herein contracted for shall be completed in accordance with the drawings, plans, and specifications annexed hereto, and ready for delivery to the party of the second part on or before the expiration of thirty months from the date hereof; but the lien of the party of the second part upon said vessel and the materials on hand for use in the construction thereof, respectively and collectively, for all moneys paid on account thereof, shall commence with the first payment, and shall thereupon attach to the work done and materials furnished, and shall, in like manner, attach from time to time, as the work progresses, and as further payments are made, and shall continue until it shall have been properly discharged. In case the completion of the vessel as aforesaid shall be delayed beyond the said period of thirty months, deductions shall be made
 319 from the price stipulated in this contract for each and every day (excepting Sundays) during the continuance of such delay, and until the vessel shall be completed as aforesaid and ready for delivery to the party of the second part as follows, viz: During the first month next succeeding the expiration of said period, three hundred dollars (\$300) a day; during the second month four hundred dollars (\$400) a day; and for each and every day (excepting Sundays) during which such completion shall be delayed thereafter, six hundred dollars (\$600); all such deductions from the price of the vessel to be made, from time to time, from any payment or payments falling due under this contract: Provided, however, That such delay shall not have been caused by the act of the party of the second part, or by fire or water, or by any strike or stand out of workmen employed in the construction of the vessel, or by other circumstances beyond the control of the party of the first part; but such circumstances shall not be deemed to include delays in obtaining materials when such delays arise from causes other than those herein specified: And provided further, That in case of any such alleged delay the party of the first part shall give immediate notice thereof in writing to the Secretary of the Navy.

In case any question shall arise, under this contract, concerning deductions from the price of the vessel herein contracted for, such question, with all the facts relating thereto, shall be submitted to the Secretary of the Navy for consideration, and his decision thereon shall be conclusive and binding upon the parties to this contract.

All delays which the Secretary of the Navy shall find to be properly attributable to the party of the second part, or to its authorized officers or agents, or any or either of them, and to have been delays operating upon the completion of the vessel within the time specified therefor in this contract, shall entitle the party of the first part to a corresponding extension of the period prescribed for the completion of the vessel: Provided, however, That no delay, nor alleged cause or causes thereof, attributed by the party of the first part to the party of the second part, its officers or agents, shall be considered by the Secretary of the Navy unless the party of the first part shall, at the time of the occurrence of such delay, notify him in writing of the facts and circumstances in each case, and of the extent to which the said party of the first part claims that the completion of the vessel is thereby delayed.

320 Ninth: The party of the first part hereby further covenants and agrees that the vessel to be constructed under this contract shall be sufficiently strong to carry the armament, equipment, coal, stores, and machinery prescribed by the Secretary of the Navy and indicated in the annexed drawings, plans, and specifications and that the total weight of said machinery, including engines, boilers, and appurtenances, all fixtures in engine and fire rooms, smoke pipes, distilling apparatus, stores, spare parts, heating apparatus, tools in workshop, and water in boilers, condensers, pumps, pipes, and stern tubes (but not including reserve feed water, capstan, windlass, steering gear, or winches) shall not exceed four hundred and twenty-seven tons, this weight to be determined from the certified records of the actual weight of the parts of the machinery as they are sent on board the vessel to be connected up, except the weight of the contained water, which shall be calculated from the actual volumes in steaming condition, as shown on the certified drawings of the completed machinery; the weight to be calculated for salt water, except for those parts where fresh water only is used; that if said total weight be exceeded, a deduction of five hundred dollars (\$500) a ton shall be made from the contract price of the vessel for each ton of excess weight over that stipulated, and that if said total weight be exceeded by five (5) per cent, a further deduction of ten thousand dollars (\$10,000) shall be made from the contract price of the vessel; all such deductions to be made from any payment or payments falling due under this contract; and that when the vessel is completed, as required by the drawings, plans, and specifications, and ready for delivery to the party of the second part, she shall be subjected to a trial trip, in the open sea, under conditions prescribed or approved by the Secretary of the Navy, to test the hull and fittings, machinery, including engines, boilers, and appurtenances, the equipment, the installation of the ordnance

and ord'nance outfit, and the speed of the vessel, and that she shall be accepted only on fulfillment of, and subject to, the conditions and agreements hereinafter set forth:

1. That the working of the machinery in all its parts shall be to the satisfaction of the Secretary of the Navy.

2. The party of the first part hereby guarantees that the speed developed by the vessel upon said trial, under conditions prescribed or approved by the Secretary of the Navy, shall be not less than an average of sixteen and one-half knots an hour, maintained success-
321 fully for four consecutive hours, during which period the air pressure in the ash pits shall not exceed an average of one (1) inch of water, the vessel to be weighted to a mean draft corresponding to a trial displacement of three thousand two hundred tons.

3. That said vessel shall be found to be strong and well built, and in strict conformity with the contract, drawings, plans, and specifications, and shall be approved by the Secretary of the Navy: *Provided*, That if, and upon said trial, there shall be any failure in the vessel to meet fully the requirements of this contract, the party of the first part shall be entitled to make further trials, sufficient in number to reasonably demonstrate her capabilities: *And provided also*, That the number of trials shall be determined and limited by the Secretary of the Navy, and that all the expenses of all trials prior to the preliminary or the conditional acceptance of the vessel shall be borne by the party of the first part.

Tenth. If, at and upon the trial before mentioned, the foregoing requirements and conditions relating to the vessel herein contracted for shall be fulfilled, and if the speed guaranteed as aforesaid shall be developed and maintained as aforesaid, then and in such case the vessel shall be preliminarily accepted, and payment of the last two instalments of the price stipulated in this contract, and of all reservations, shall be made, subject, however, to a special reserve of thirty thousand dollars (\$30,000) from and out of the reservations hereinafter provided for; but if the speed developed and maintained by the vessel on her trial shall fall below the speed guaranteed as aforesaid, but not below $15\frac{1}{2}$ knots an hour, she shall be conditionally accepted, subject to deductions from the price of the vessel on account of her failure to reach the speed guaranteed as aforesaid, at the rate of twenty-five thousand dollars (\$25,000) a quarter knot for speed between $16\frac{1}{2}$ and 16 knots, and fifty thousand dollars (\$50,000) a quarter knot for speed between 16 and $15\frac{1}{2}$ knots: *Provided, however*, That all the other requirements and conditions of this contract shall have been fulfilled, and, in case of such conditional acceptance, that the last two instalments of the price of the vessel and the reservations on payments under this contract shall constitute a reserve fund which shall be applicable to or toward the satisfaction of such deductions, and shall be retained by the party of the second part for that purpose: *And provided further*, That if the vessel fails to exhibit an average speed of at least $15\frac{1}{2}$ knots an hour it shall be optional

322 with the Secretary of the Navy to reject her or to accept her at a reduced price and upon conditions to be agreed upon between the said Secretary and the party of the first part.

In case of a preliminary acceptance of said vessel, the said special reserve of thirty thousand dollars (\$30,000), or, in case of a conditional acceptance of the vessel, the said reserve fund, or so much thereof as may, in the judgment of the Secretary of the Navy, be necessary, shall be held until the vessel has been finally tried, after being fully equipped, armed, or weighted correspondingly, and in all respects complete and ready for sea, under conditions prescribed or approved by the Secretary of the Navy: Provided, That such final trial shall take place within five months from and after the date of the preliminary or the conditional acceptance of the vessel, and that the expenses thereof shall be borne by the party of the second part.

If, at and upon such final trial, or at any time within five months after the preliminary or the conditional acceptance of said vessel, such final trial not having taken place, any weakness or defect in the vessel, or any failure, breaking down, or deterioration other than that due to fair wear and tear of any part or parts of the machinery, engines, boilers, or appurtenances shall appear, the same shall be corrected and repaired to the satisfaction of the Secretary of the Navy at the expense of the party of the first part, and the party of the first part may, if it so desires, have an engineer of its own selection present in the engine room of said vessel at any time or times during said period, who shall have full opportunity to observe and inspect the working of the machinery in all its parts, but without any directing or controlling power over the same; and in case such engineer shall be a civilian, his compensation shall be paid by the party of the first part.

If said vessel be not in readiness for such trial within five months from the date of her preliminary or conditional acceptance, through no fault or delay on the part of the party of the first part, and if there shall have appeared no weakness or defects in the vessel, nor any failure, breaking down, or deterioration other than that due to fair wear and tear of any part or parts of the machinery, engines, boilers, or appurtenances, then the vessel shall be finally accepted, and the said special reserve, or the surplus, if any, of the said reserve fund paid, subject, however, to deduction on account of any reductions that may be made in the price of the vessel under the provisions of this contract.

323 In case of the rejection of the vessel for any of the causes provided for in this contract, the party of the first part shall refund to the party of the second part on demand, or within sixty days thereafter, all payments theretofore made to the said party of the first part, for or on account of the construction of said vessel, and shall also return to the party of the second part, in good and proper condition, all equipment attached to or upon the vessel or in the possession of the party of the first part, furnished by or received from the party of the second part, or reimburse the costs thereof to the party of the second part.

Eleventh. The party of the second part having approved, as foundation for this contract, drawings, plans, and specifications of a vessel which it has reason to think would, if properly carried out result in the production of a speed of not less than $16\frac{1}{2}$ knots an hour, assumes no responsibility with reference thereto, and will consider any changes suggested by the party of the first part either as to hull or machinery, and, as the responsibility is with the party of the first part, will feel it to be his duty to deal liberally with any proposed changes, so long as the size, strength, and character of the vessel shall remain substantially the same; changes in plans or specifications involving increased or decreased expense to be dealt with as provided for in the second clause of this contract.

Twelfth. It is further mutually understood, covenanted, and agreed that, in case of the failure or omission of the party of the first part at any stage of the work prior to its completion, from any cause or causes other than those specified in the eighth clause of this contract, to go forward with the work and make satisfactory progress toward its completion within the prescribed period, it shall be optional with the Secretary of the Navy to declare this contract forfeited. The party of the first part shall thereupon, and on notice thereof in writing, be, and the said party of the first part does hereby, in consideration of the premises for itself, and its successors and assigns, and its legal representatives, acknowledge itself to be justly indebted to the party of the second part, as for liquidated and ascertained damages, in a sum equal to the aggregate amount of all payments, theretofore made to it for or on account of work done under this contract, and does further covenant and agree, as aforesaid, to refund the same on demand, or within sixty days thereafter, and

324 that the party of the second part shall and may hold, as collateral security for such refund, said vessel, or so much thereof as shall then have been constructed, and all materials furnished or on hand for the purposes of construction. The Secretary of the Navy shall thereupon cause to be taken and filed a full and complete statement and inventory of all work done or commenced in, upon, or about said vessel, and of all materials on hand applicable thereto, the property of the party of the first part, and shall cause the same to be duly valued by a board consisting of not less than five persons, qualified by knowledge and experience for the discharge of their duties, to be appointed by the Secretary of the Navy, which board shall proceed without unnecessary delay to examine such work and materials and ascertain and declare the fair market value thereof, including a reasonable and customary margin of profit upon so much of the work as shall have been, at the time such forfeiture is declared, satisfactorily performed; and upon such examination the party of the first part may attend, by its representative, or, if it so desires, by counsel, and submit such evidence as the board may deem proper.

Thirteenth. Upon receipt of the report and finding of said board, and upon his approval thereof, the Secretary of the Navy may, in his discretion, proceed to complete said vessel, in accordance with

the contract, drawings, plans, and specifications, using for that purpose all suitable materials on hand and included in the inventory aforesaid; and that title to said vessel, or so much thereof as shall have been completed, and to all such materials shall forthwith vest in the party of the second part; and the party of the first part does hereby for itself, and its successors and assigns, and its legal representatives, covenant and agree to and with the party of the second part that, on receiving notice of the intention of the Secretary of the Navy to proceed to the completion of the work, it will surrender said vessel and all materials on hand, together with the use of the yard or plant and all machinery, tools, and appliances appertaining thereto and theretofore used or necessarily to be used in and about the completion of the work.

Fourteenth. In case the Secretary of the Navy shall proceed under the foregoing clause to complete the work, such procedure shall be without unnecessary delay and shall be at the risk and expense of the party of the first part, which party shall be chargeable with any increase in the cost of materials or labor incurred by reason of its failure to perform this contract. Upon the final settlement
325 of the liability of the party of the first part an account shall be stated substantially as follows:

The part of the first part shall be charged—

1. With all payments made.
2. With the extra cost, if any, of materials and labor and all other extra expenses, if any, incurred in the completion of the work.

The party of the first part shall then be credited with the value of the work done up to the time of suspension, and of the materials on hand, as ascertained by the board, under the provisions of the twelfth clause of this contract, and approved by the Secretary of the Navy, and with such payments, if any, as may have been refunded. If a balance shall thereupon appear in favor of the party of the first part, the same shall be paid to and accepted by the said party of the first part in full discharge of all claims under this contract; but if a balance shall appear in favor of the party of the second part, the party of the first part hereby covenants and agrees, as aforesaid, to pay and discharge the same on demand.

Fifteenth. It is mutually understood, covenanted, and agreed, by and between the respective parties hereto, that it shall not, under any circumstances, be obligatory upon the party of the second part to accept or pay for the vessel, or any part thereof, to be constructed under this contract, unless she shall have been completed in strict conformity with this contract, and in accordance with the provisions of the acts of Congress relating thereto, and that this qualification shall be deemed and taken as applicable and applying to each and every clause, covenant, and condition, express or implied, in this contract contained.

Sixteenth. It is mutually understood, covenanted, and agreed, by and between the respective parties hereto, that this contract shall not, nor shall any interest herein, be transferred by the party of the first part to any other person or persons.

Seventeenth. It is hereby mutually and expressly covenanted and agreed, and this contract is upon the express condition, that no Member of or Delegate to Congress, officer of the navy, nor any person holding any office or appointment under the Navy Department, is or shall be admitted to any share or part of this contract, or to any benefit to arise therefrom; but this stipulation, so far as it relates to Members of or Delegates to Congress, shall not be construed as extending to this contract, it being made with an incorporated company.

Eighteenth. The party of the second part, in consideration of the premises, does hereby contract, promise, and engage, to and with the party of the first part, as follows:

1. The price to be paid for the vessel to be constructed and furnished, in accordance with this contract, shall be one million and twenty-seven thousand dollars (\$1,027,000.00).

2. Payments shall be made by the party of the second part in twenty equal instalments as the work progresses, with a reservation of ten (10) per cent from each instalment.

3. No payment shall be made except upon bills in quadruplicate, certified by the inspectors or hull and machinery of the vessel, in such manner as shall be directed by the Secretary of the Navy, whose final approval of all bills thus certified shall be necessary before payment thereof.

4. All warrants for payments under this contract shall be made payable to the party of the first part or its order.

5. Payment of the last two instalments shall not be made except as provided for in the tenth clause hereof.

6. When a payment is to be made under this contract, as a condition precedent thereto the Secretary of the Navy may in his discretion require, for the protection of the party of the second part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights in rem of any kind against said vessel, or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired, for or on account of any work done or any machinery, fittings, equipment, or material already incorporated as a part of said vessel, or on hand for that purpose, or that such liens or rights have either been released absolutely or so subordinated to the rights of the Government as to makes its lien for all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel.

7. When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of the party of the first part, said party of the first part shall be entitled, within ten days after the filing and acceptance of its claim, to receive the said special reserve, or the surplus, if any,

of said reserve fund, or so much of either as the said party of the first part may be entitled to, on the execution of a final release to the party of the second part, in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of this contract.

Nineteenth. If any doubts or disputes arise as to the meaning of anything in the drawings, plans, or specifications, or if any discrepancy appear between said drawings, plans, or specifications and this contract, the matter shall be at once referred to the Secretary of the Navy for determination; and the party of the first part hereby binds itself, and its successors and assigns and its legal representatives, to abide by his decision in the premises.

In witness whereof, the respective parties hereto have hereunto set their hands and seals the day and year first above written.

Signed and sealed in the presence of—

PRESTON COCKE,
MARVIN J. TAYLOR.

WILLIAM R. TRIGG COMPANY,
[Seal Wm. R. Trigg Co.] By LILBURN T. MYERS,
Vice-President.

THE UNITED STATES,
By JOHN D. LONG,
As Secretary of the Navy.

Attest:

WM. C. PRESTON, *Secy.*

SAM. C. LEMLY, [Seal Navy Department.]
Judge-Advocate-General,
As to John D. Long, Secretary of the Navy.

EXHIBIT "B."—BOARD OF APPRAISAL. THE WILLIAM R. TRIGG COMPANY.

328 Enclosures: 13.

RICHMOND, VA., May 21, 1903.

HON. SECRETARY OF THE NAVY,
WASHINGTON, D. C.

SIR: The board of appraisal appointed under the twelfth clause of the contract for the construction of a protected cruiser, No. 17, known as the "Galveston," has carefully examined all the work and material upon and belonging to this cruiser at the above works, and has ascertained and declared the fair market value thereof, including a reasonable profit upon so much of the work as has been satisfactorily performed at the time of the forfeiture of the contract, as follows:

The original contract price of the "Galveston" was one million and twenty-seven thousand dollars (\$1,027,000.00). This is apportioned between hull and machinery; allowing 60% for the hull

(which includes ordnance and equipment), and 40% for machinery, as follows:

Hull	\$616, 200
Machinery	410, 800
	<hr/> 1, 027, 000
Referring to the inventory of the hull, it will be seen that changes have reduced the portion allotted to the hull by \$20,574.91, leaving a balance for the completion of the hull of.....	595, 625. 09
One change in the machinery increases the cost of same by \$170.00, making a total of.....	410, 970. 00
Total value of vessel, being basis of valuation.....	<hr/> 1, 006, 595. 09
Amount earned on hull, including extras.....	381, 687. 53
Amount earned on machinery.....	317, 421. 00
Amount earned on extras, on machinery.....	55. 00
Total amount earned.....	<hr/> 699, 163. 53
329 Cash paid on hull.....	\$370, 404. 00
Cash paid on hull for extras.....	5, 289. 45
Cash paid on machinery.....	322, 821. 00
Total paid contractors.....	<hr/> 698, 514. 45
Balance due contractors.....	<hr/> 649. 08

This total amount of six hundred and ninety-nine thousand one hundred and sixty-three dollars and fifty-three cents (\$69,163.53) the board declares to be a fair market value of the work and material belonging to the "Galveston," including a reasonable margin of profit upon so much of the work as has been satisfactorily performed at the time of the forfeiture of the contract.

Appended to and forming a portion of this report are the following appendices:

Appendix A. Letter from the senior member of the board to vice-president and receiver of the William R. Trigg Company, advising him of the meeting of the board, etc.

Appendix B. Copy of the letter from the engineer in chief of the navy to the inspector of machinery instructing him to furnish the board with such information and papers as might be desired.

Appendix C. Copy of the letter from the chief constructor to the superintending naval constructor instructing him to furnish the board with such information and papers as might be desired.

Appendix D. Letter from the vice-president and receiver of the William R. Trigg Company acknowledging letter of the senior member of the board.

Appendix E. Statement of the superintending naval constructor as to the amount earned on the hull, ordnance and equipment, and inventory of material remaining on hand.

Appendix F. Statement of the inspector of machinery as to the amount earned on machinery.

Appendix G. Inventory of machinery and material pertaining to the "Galveston."

Appendix H. Letter from the engineer in chief of the navy to the inspector of machinery directing him to furnish the board with a certified copy of the machinery specifications for that vessel corrected to date.

330 Appendix I. Certified copy of the specifications of the machinery of the vessel.

Appendix J. Letter from the inspector of machinery relative to a change not acted on by the board of changes in connection with the machinery of the vessel.

Appendix K. Letter of the engineer in chief of the navy to the inspector of machinery relative to the same subject.

Appendix L. Record of the proceedings of the board.

Appendix M. Precept convening the board.

The papers accompanying the precept convening the board are herewith returned.

Very respectfully,

THOS. O. SELFRIDGE,

Rear-Admiral, U. S. N., Senior Member of the Board.

F. L. FERNALD,

Naval Constructor, U. S. N., Member of the Board.

EMIL THEISS,

Lieutenant, U. S. N., Member of the Board.

C. F. PRESTON,

Lieutenant, U. S. N., Member of the Board.

WM. G. GROESBECK,

*Asst. Naval Constructor, U. S. N.,
Member of the Board and Recorder.*

APPENDIX "E."—Statement of superintending as to amount earned on hull, including ordnance and equipment and inventory of material remaining on hand.

"GALVESTON."

Statement of changes involving changes in cost.

Change.	Increase.	Decrease.
Position of air locks.....		\$95.00
Waterways and supplies.....	\$578.55	60.00
331 Air space bulkheads.....		8,200.00
Omission coppering.....	185.45	
Length 2" armor plate.....	2,574.00	
Inc. diam. sheathing bolts.....		103.00
Awning and rail stanchions.....		35.00
Chain lockers.....		65.00
Cofferdams.....	25.84	
Lowering top rudder.....	15.00	
Quarter gun deck.....		200.00
Arrangements magazines.....	220.00	
Ordnance office.....		59.78
Miner bottom compartments.....		750.00
Telemotor control.....		

Change.	Increase.	Decrease.
Structural changes, ventilation.....	\$275. 00	
Staples on top cofferdam.....	1, 200. 00	
Arrangement berth deck quarters.....	183. 00	
Omission of F. P. Wood.....		\$6, 760. 00
Shaft tubes.....		246. 00
Stem and stern post.....	1, 150. 00	
Scantlings of stem.....		563. 00
Palms of struts.....	180. 00	
Omission power doors.....		10, 500. 00
Type inside sheathing.....		4, 700. 00
Coaling arrangements.....	2, 540. 00	
Government provides folding berths.....		665. 00
Omit portable derrick.....		70. 00
Installation water tanks.....	63. 00	
Type coaling scuttles.....	440. 00	
Air lock blkhd. 47.....	29. 14	
Hand hole caps, magazines.....		70. 00
Alter size of galley ranges.....	74. 00	
Pilot house and bridge.....		450. 00
Extend galley spaces.....	79. 14	
Boat stowage and davits.....	1, 600. 00	
Controlling panels, ammunition hoist motors.....	100. 00	
Metal for wood skylights.....	334. 20	
Type W. T. doors, C. L. bulkhead.....	175. 00	
Plans ammunition hoists.....	850. 00	
Provide bakery in galley.....	350. 00	
332 Hawse pipes and anchors.....	1, 446. 00	
Ventilation.....		1, 040. 00
Omission shoe lockers.....		239. 95
Type doors handling room.....		400. 00
Sofas for transoms in cabin.....		95. 00
Non-F. G. gangway boards.....		15. 00
Metal for wood, booby hatch.....	101. 00	
Cage stands for two 6-pdrs.....	35. 00	
Total.....	\$14, 803. 82	35, 378. 73
		14, 803. 32
Net decrease on account changes.....		\$20, 574. 91

The total value of the hull based upon 60% of the contract price, \$616,200.00. The net change in this value due to changes as given in the appended table is \$616,200.00, minus \$20,574.91, or in all \$595,625.09. The inventory herewith is based on this amount, and it has been the endeavor to put in the different items at as fair a price per pound as possible considering this value.

Approximate estimate of values on hull, equipment, and ordnance, and proportionate prices per pound on cruiser # 17, "Galveston."

NOTE.—Following inventory is based on this schedule:

	Weight in pounds.	Equiv. price per lb.	Value.
1. Ordinary steel in hull (ordinary steel only).....	2, 362, 339*	.0825	\$194, 892. 97
2. Bronze castings and bronze plates.....	87, 275*	.37½	32, 728. 13
3. Miscellaneous forgings wrought iron metal, fittings, etc.....	19, 079	.12	2, 289. 48
4. Miscellaneous brass castings and fittings.....	4, 461	.40	1, 784. 40
5. Protective deck armor and fastenings.....	†134, 551	.12½	16, 818. 88
6. Deck stanchions.....	11, 330	.15	1, 699. 00
7. Deck plank for fastening, etc. (includes all deck covering and fastening).....	157, 345	.07	11, 014. 15
8. Joiner work.....	86, 309	.22	18, 987. 98

	Weight in pounds.	Equiv. price per lb.	Value.
9. Outside planking and fastenings.....	†316,000	.09	\$28,440.00
10. Installation of masts and spars.....	19,430	.02	389.00
11. Ladders.....	8,811	.15	1,291.65
12. Painting and cementing.....	188,760	.11	20,763.60
13. Steering gear.....	42,333	.35	14,816.00
14. Pumping and drainage systems, and plumbing..	65,200	.45	29,340.00
15. Ventilation system.....	67,565	.30	20,270.00
16. Warping and towing gear.....	13,375	.30	4,012.50
17. Boat and coal handling gear.....	31,244	.25	7,811.00
18. Ammunition hoisting gear.....	19,546	.55	10,750.30
19. Hand rails, hatch canopies, etc.....	15,893	.30	4,767.90
20. Air ports, deck lights, etc.....	85,585	.32	26,381.00
22. Miscellaneous fittings.....	94,192	.25	23,548.00
23. Fitting gun protective armor.....	47,125	.4	1,885.00
24. Power plant.....	36,848	.37½	13,818.00
25. Electrical and other leads and interior commu- nications.....	28,256	.45	12,715.20
26. Cellulose.....	53,840	.25	13,460.80
27. Installation of ordnance.....	217,952	1	2,180.00
28. Installation of ground tackle and other articles furnished by the Government.....	145,345	½	727.00
29. Installation of rigging and lines.....	36,917	1½	554.00
30. Miscellaneous equipment.....	31,494	25	7,873.50
334 31. Anchor and cable handling appliances..	45,391	20	9,078.23
32. Preparation of slip cribbing and laying down mold loft.....			12,000.00
33. Launching.....			5,000.00
34. Preliminary and official trials.....			4,000.00
35. Miscellaneous expenses.....			35,794.45
			<hr/> \$595,625.09

NOTE.—* Finished weight and weight in material remaining.

† Finished weight.

Report of material expended on hand for cruiser No. 17, "Galveston."

Item.	Materials.	Weight in lbs.	Price.	Amount.	Group total.
1. Expended:					
	Plates, steel.....	\$1,493,731			
	Shapes.....	583,820			
	Rivets.....	129,730			
		<hr/>			
		\$2,207,281	@.0825	\$182,100.68	
On hand:					
	Plates, steel.....	81,034			
	Shapes, steel.....	58,843			
	Corrugated plates.....	13,597			
	Total.....	155,058	@.034	5,271.97	187,372.65
2. Expended:					
	Castings, bronze.....	75,054			
	Rudder and pilot house plates, bronze.....	4,917			
	Pilot house shapes.....	1,824			
335	Rudder rivets.....	260			
	Rudder wood filling (2927).....				
	Rudder cement (145).....				
		<hr/>			
	Total.....	82,055	@.375	30,770.63	
On hand:					
	Pilot house plates, bronze.....	2,643			
	Pilot house shapes, bronze.....	2,557			
		<hr/>			
	Total.....	5,220	@.22	1,148.00	31,919.03

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	Item. Materials.	Weight in lbs.	Price.	Amount.	Group total.
3.	Expended:				
	Stem, wrought iron.....	\$1,648			
	Liners, wrought iron.....	80			
	Bolts and nuts.....	119			
	Grab rods.....	308			
		2,155	@. 12	\$258. 60	358. 60
4.	Expended:				
	Moulding at stern, brass.....	590			
	Stiffeners on mainmast, supports, brass.....	110			
		700	@. 40	280. 00	280. 00
5.	Expended:				
	Protective deck, nickel steel....	134,551	@. 12½	16,818. 88	16,818. 88
336	6. Expended:				
	Stanchions, wrought iron.....	10,302	@. 15	1,545. 30	
	350 lbs. pipe 3", 60 ft.....		@. 30	18. 00	1,563. 30
7.	Expended:				
	Ga. pine in coal.....	2,513			
	Ga. pine gun foundations.....	2,170			
	Ga. pine misc. foundations.....	2,049			
	Total.....	6,732	@. 15	1,009. 00	
	Labor on plank sheers.....			135. 00	
	Labor on holes for bolts.....			700. 00	
				1,844. 00	
7 & 8.	On hand:	Feet.			
	Deck planking dressed, four sides				
	Ga. pine.....	38,079	@. 075	2,855. 93	
	27,200 ¼" bolts.....		@. 03	816. 00	
	Gun foundations, Ga. pine... 11,689				
	Miscellaneous foundations.... 6,170				
		17,859	@. 045	803. 66	
	White pine, fireproofed.....	17,294	@. 14	2,421. 16	
	Quartered oak, fireproofed.....	4,729	@. 175	827. 58	
	White pine in stock.....	24,325	@. 085	2,067. 63	
	Labor on elect. store-rooms.....			250. 00	\$11,786. 96
337	9. Expended:				
	Outside sheathing, Ga. pine....	254,883			
	Studs, and nuts, brass.....	25,922			
	Sheet copper.....	1,276			
	Washers, wrought iron.....	3,008			
	Oakum.....	7,287			
	Cotton.....	7			
	Hemp.....	200			
	Paint.....	23,418			
		360,001	@. 09	28,440. 00	28,440. 00
12.	Expended:				
	Paint, etc.....	56,336			
	Pitch, etc.....	168			
	Total.....	56,504	@. 11		6,215. 44
13.	Expended:				
	Steering gear, steel casting.....	1,895	@. 12	\$227. 40	
	Steering gear, comp.....	82	@. 40	32. 80	
	Steering gear, wrt. steel.....	176	@. 12	21. 12	
	Steering gear, wrt. steel.....	641	@. 12	76. 92	
	Total.....	2,794		\$368. 24	
On hand:					
	Sheet brass.....	135	@. 25	33. 75	401. 99
14.	Pumping, drainage and plumbing, as per list.....			18,337. 50	18,337. 50

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	Item. Materials.	Weight in lbs.	Price.	Amount.	Group total.
338	15. On hand: Galv. sheet steel for ventilation.	\$11,640	@. 04	\$465. 60	\$465. 60
16.	Expended:				
	Warping and towing comp. castings..	5,143	@. 35	1,700. 05	
	Warping and towing cast iron.....	10,445	@. 03	313. 35	
	Warping and towing wrt. iron.....	1,640	@. 12	196. 80	2,210. 20
20.	On hand:				
	Air ports, etc., 163 port hole lenses...			194. 68	
	Rubbers.....	1,012	@. 60	607. 20	
	Brass castings.....	5,723	@. 25	1,430. 75	
	Brass castings, mag. light, boxes.....	1,308	@. 25	327. 00	
	69 light frames, brass.....	587	@. 25	146. 75	2,706. 38
21.	Expended:				
	Doors, hatch covers, cast steel.....	3,121	@. 12	374. 52	
	Wrought iron liners.....	565	@. 12	67. 80	
	Comp. fittings.....	214	@. 40	85. 60	
	Wrt. iron and steel fit'gs.....	216	@. 12	25. 92	
	Rubber.....	153	@. 60	91. 80	
	Wrought from gratings.....	1,530	@. 12	183. 60	
				829. 24	
	On hand:				
	Ash chute, cast steel.....	281	@. 10	28. 10	
339	Gratings, wrt. iron.....	296	@. 10	29. 60	
	Door fittings, wrt.....	7,367	@. 10	736. 70	
	45 angle door frames.....	3,600	@. 10	360. 00	
	45 angle bulkhead frames.....	4,950	@. 10	495. 00	
	8 V. S. door frames.....	1,160	@. 25	290. 00	
	Coaling scuttles.....	10,608	@. 35	3,712. 80	
	Coaling scuttles, cast iron.....	3,256	@. 06	195. 36	
	Wrought-steel hatch coamings and covers.....	1,485	@. 10	148. 50	
				\$5,996. 14	6,825. 38
22.	Expended:				
	Canvas stop waters.....	402	. 05	30. 10	
	Com. pad eyes.....	237	. 35	82. 95	
	Cast-iron sea stops.....	1,222	. 10	122. 20	
	Comp. draft figures & name letters....	193	. 35	67. 55	
		2,054		292. 80	
	On hand:				
	Galv. ceiling in crew's quarters.....	11,000	. 04	440. 00	732. 80
23.	Expended:				
	Gun port armor.....	44,185	. 04	816. 60	816. 60
24.	Drilling holes for electrical work.....			500. 00	500. 00
25.	25 C. B. electrical fix.....	1,250		500. 00	
	5 ceiling.....	30		10. 00	
	Mis. elec. equipment helm indica- tors, etc.....			2,839. 76	3,399. 76
26.	On hand:				
	Cellulose.....	56,363	. 022	12,399. 86	12,399. 86
340	27. Expended:				
	Gun mounts.....	23,980		15. 00	15. 00
30.	On hand:				
	2 7" ranges.....			175. 00	
	50 battle lanterns.....			125. 00	
	24 deck lanterns.....			48. 00	
	13 deck lights.....			13. 00	561. 00
31.	Expended:				
	Wrt. iron pad eyes in lockers.....	410	@. 12	49. 20	
	On hand:				
	Steel casting for anchor crane.....	3,190	@. 10	319. 00	
	Wrt. steel.....	1,257	@. 12	150. 84	
	Steel forging.....	1,750	@. 12	210. 00	
	Brass casting.....	184	@. 25	46. 00	
	Windlass capstan.....			3,750	
					4,525. 04

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Item. Materials.	Weight in lbs.	Price.	Amount.	Group total.
32. Building slip, cribbing, etc.....			\$12,000.00	\$12,000.00
33. Launching.....			2,500.00	2,500.00
35. Superintendence.....			28,635.56	28,635.56
				381,687.53
Amount allowed on hull.....			\$411,560.00	
Amount reserved.....			41,156.00	
Cash paid on hull.....			\$370,404.00	
Cash paid on extras.....			5,289.45	
Total amount pd. contractors.....			\$375,693.45	
Balance due contractors on account of hull.....				\$5,994.08

341 Inventory of material on hand to be used on hull.

No.	Item.	Mark.	Dimensions.	Weight.
1	Plate.....	A. H.	23 x 128 x 10	210
1	".....	F. P.	240 x 48 x 12 1/2	1,025
3	".....	F. P.	240 x 48 x 12 1/2	3,545
1	".....	A. H.	94 x 22 x 10	300
1	".....	A. H.	116 x 22 x 10	170
1	".....	A. H.	128 x 23 x 10	200
2	".....	A. H.	196 x 23 x 10	635
2	".....	A. H.	68 x 56 x 32 x 7 1/2	312
1	".....	A. H.	17 x 196 x 10	225
1	".....	A. H.	28 x 185 x 10	335
3	".....	A. H.	30 x 108 x 7 1/2	497
1	".....	A. H.	111 x 25 x 10	185
1	".....	A. H.	141 x 25 x 10	290
1	".....	A. H.	130 x 22 x 10	402
1	".....	A. H.	160 x 25 x 10	290
1	".....	A. H.	182 x 33 x 10	247
1	".....	A. H.	152 x 33 x 10	246
2	".....	A. H.	108 x 30 x 7 1/2	320
2	".....	A. H.	212 x 42 1/2 x 15	1,800
2	".....	A. 15	220 x 48 x 15	2,240
1	".....	Stock	233 x 60 x 15	1,275
1	".....	Stock	188 x 26 x 10	365
2	".....	G. H. H.	85 x 10 x 7 1/2	100
1	".....	G. H. H.	152 x 10 x 7 1/2	70
2	".....	C. A. 2	88 x 30 x 7 1/2	273
2	".....	B. H.	135 x 16 x 12 1/2	438
3	".....	C. A.	88 x 30 x 7 1/2	392
6	".....	Stock	3 1/2 x 3 x 3/8	1,825
6	Angles.....	Stock	4 x 3 x 1/2	1,950
16	".....	Stock	4 x 3 1/2 x 7/16	5,457
1	".....	Stock	4'' x 4'' x 7/16	270
9	Flats.....	Stock	3 1/2 x 1/4 x	205
2	Angles.....	Stock	4'' x 3'' x 7/16	750
12	Angles.....	Stock	4'' x 3'' x 5/16	3,120
342	2 ".....	Stock	3 1/2 x 3'' x 7/16	250
7	bulb angles.....	Stock	7 x 3'' x 1/2	2,560
3	channels.....	Stock	6 x 3 1/2 x 7/16	1,615
6	Z bars.....	Stock	5 x 3 1/2 x 7/16	2,465
15	angles.....	Stock	3 1/2 x 2 1/4 x 7/16	2,385
12	".....	Stock	3 x 3 x 3/8''	3,020
3	".....	Stock	3 x 3 x 5/16	300
1	".....	Stock	3 x 3 x 7/16	70
1	".....	Stock	3 x 2 1/2 x 1/4''	170
2	".....	Stock	4 x 4 x 7/16	340
4	".....	Stock	2 1/2 x 2 1/2 x 7/16	480
1	plate.....	H. B.	106 x 48 x 10	365
1	".....	H. B.	123 x 48 x 10	400
1	".....	B. C. 5	220 x 62 x 7 1/2	960

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No.	Item.	Mark.		Dimensions.			Weight.
1	plate.....	Stock	21	x 111	x 10 lb.		192
2	".....	Stock	20	x 115	x 10 lb.		325
1	".....	Stock	22	x 100	x 10 lb.		162
1	".....	Stock	22	x 82	x 10 lb.		130
1	".....	Stock	18	x 115	x 10 lb.		140
11	".....	Stock	88	x 30	x 7 1/2		1,505
1	".....	Stock	24	x 78	x 10 lb.		162
1	".....	Stock	30	x 133	x 12 1/2 lb.		345
1	".....	Stock	39	x 42	x 12 1/2 lb.		166
1	".....	Stock	24	x 192	x 12 1/2 lb.		312
18	bars 1/2 round.....	Stock	2	x 1"			1,934
1	plate.....	A. H.	90	x 24	x 12 1/2 lb.		365
1	".....	Stock	81	x 22	x 10 lb.		130
1	".....	Stock	255	x 35	x 12 1/2 lb.		885
1	".....	B. R.	135	x 25	x 5 lb.		335
1	".....	Stock	189	x 6 1/2	x 3 1/2 lb.		561
1	".....	Stock	108	x 51	x 5 lb.		138
1	".....	B. C. 36	85	x 32	x 7 1/2 lb.		128
2	".....	B. C. 9	96	x 48	x 10 lb.		568
2	".....	B. C. 30	115	x 48	x 10 lb.		950
1	".....	B. C.	49	x 39	x 15		105
1	".....	B. C.	67	x 52	x 15		125
1	".....	C. L. B. P. B.	146	x 25	x 15		380
3	".....	Stock	55	x 9	x 12 1/2		193
	1 plate.....	Stock	45	x 9 1/2	x 15		127
343	1 angle.....	Stock	1	x 1	x 1/8		31
	25 plate.....			7/8	x 3/8		412
7	plate.....	H. B.	14	x 46	x 26 x 10		552
1	".....	5 M. B. H. D.	42	x 18	x 10		50
1	".....	Stock	87	x 34	x 7 1/2		185
1	".....	Stock	87	x 34	x 7 1/2		185
1	".....	P. P.	52	x 23	x 7 1/2		85
1	".....	G. H.	194	x 26	x 7 1/2		463
2	".....	G. H.	132	x 30	x 7 1/2		392
1	".....	G. H.	189	x 28	x 7 1/2		365
1	".....	Stock	194	x 60	x 12 1/2		1,050
1	".....	Stock	148	x 72	x 10		845
1	".....	Stock	220	x 52	x 10		1,015
1	".....	Stock	218	x 68	x 15		1,955
1	".....	Stock	228	x 63	x 15		1,465
1	".....	Stock	249	x 44	x 12 1/2		925
1	".....	Stock	36	x 24	x 12 1/2		77
1	".....	H.	110	x 23	x 12 1/2		182
1	".....	R. P.	62	x 48	x 10		192
1	".....	R. P.	61	x 44	x 10		200
1	".....	G. G. H.	100	x 9	x 7 1/2		48
2	".....	G. G. H.	96	x 11	x 7 1/2		90
1	".....	G. G. H.	90	x 10	x 7 1/2		47
1	".....	G. G. H.	54 1/2	x 123	x 12 1/2		540
3	".....	G. G. H.	240	x 48	x 12 1/2		3,120
2	".....	D. 4.	218	x 52"	x 17 1/2		2,720
1	".....	D. 1.	224	x 51	x 17 1/2		1,100
1	".....	M. F.	218	x 60	x 17 1/2		1,185
1	".....	M. 7	202	x 62	x 10		865
1	".....	55	90	x 50	x 15		485
1	".....	I. B.	224	x 60	x 12 1/2		1,200
1	".....	Stock	90	x 24	x 10 lb.		150
1	".....	Stock	16	x 35	x 15 lb.		60
1	".....	Stock	36	x 24	x 15 lb.		78
1	".....	Stock	51	x 44	x 15 lb.		135
1	".....	Stock	42	x 60	x 15 lb.		242
2	".....	Stock	32	x 72	x 12 lb.		490
1	".....	Stock	14	x 80	x 7 1/2 lb.		65
	1 plate.....	Stock	106	x 16	x 7 1/2 lb.		90
344	1 ".....	Stock	37	x 62	x 10 lb.		160
	1 ".....	Stock	102	x 34	x 15 lb.		373
2	plate.....	Stock	119	x 34	x 15		565

No.	Item.	Mark.	Dimensions.		Weight.
1	plate.....	Stock	127	x 38 x 10 lb.	340
1	".....	Stock	101	x 53 x 5 lb.	190
2	".....	B. C. 41	115	x 51 x 7 1/2 lb.	460
1	".....	B. C. 41	116	x 45 x 7 1/2 lb.	300
1	".....	Stock	180	x 45 x 15 lb.	910
1	".....	B. P.	180	x 48 x 15 lb.	925
1	".....	Stock	216	x 23 x 10 lb.	365
1	".....	Stock	230	x 26 x 10 lb.	420
3	".....	Stock	36	x 96 x	365
3	".....	Stock	120	x 48 x	640
3	bundles.....	Stock	3/4 x	1/8 x	435
1	plate.....	B. C.	188	x 60 x 7 1/2 lb.	610
1	".....	B. C.	188	x 46 x 7 1/2 lb.	725
1	".....	B. S. 4	222	x 60 x 10 lb.	1,300
1	".....	B. S. 4	220	x 62 x 10 lb.	1,015
	3 plates.....	B. S. 4	222	x 60 x 10 lb.	3,765
295	corrugated plates.....	B. H. D.	90	x 30 x	13,597
	1 plate, ash hoist.....	Stock	2 1/2 x	7/16 x	50
3	plate, ash hoist.....	Stock	1 1/4 x	1/4	50
8	plate, ash hoist.....	Stock	2	x 1/2	410
145	plate, air space.....	B. H. D.	1 1/2 x	1/2	5,260
3	plates galv.....	Stock.	48	x 96 x 5 lb.	579
4	l. beams.....	Stock	3	x 2 1/2 x 3/16	365
1	plate.....	Stock	124	x 62 x 10 lb.	750
1	".....	Stock	124	x 64 x 5 lb.	320
1	".....	Stock	157	x 52 x 5 lb.	365
5	angles.....	Stock	3 1/2 x	3 1/2	1,665
4	".....	Stock	3 1/2 x	3 1/2 x	1,070
2	plate.....	Stock	128	x 28 x 10 lb.	413
1	".....	Stock	111	x 23 x 10 lb.	184
1	".....	Stock	128	x 20 x 10 lb.	167
1	".....	Stock	150	x 91 x 7 1/2	74
5	angles.....	Stock	3	x 2 1/2 x 6.63	1,204
1	".....	Stock	2	x 2 x 12 1/2.	143
	5 angles.....	Stock	3	x 3 x 5 lb.	1,343
345	1 ".....	Stock	2	x 3 x 5/16	150
	2 ".....	Stock	2 1/2 x	2 1/2 x 5 lb.	255
1	plate.....	F. P.	37	x 26 x 20 lb.	165
1	".....	F. P.	35	x 28 x 20	141
1	".....	F. P.	46	x 26 x 20 lb.	170
1	".....	A. D. 12	115	x 22 x 10	171
1	".....	A. D. 12	115	x 22 x 10	173
1	".....	A. D. 12	130	x 22 x	205
27	bars 1/2 round.....	Stock	3	x 1 1/2	5,388
5	angles.....	Stock	3 1/2 x	3 1/2	1,365
1	plate.....	Stock	99	x 147	320
2	".....	E. C. 2	155	x 46 x 12 1/2	1,230
1	".....	E. C. 8	218	x 50 x 12 1/2	930
1	".....	E. C. 8	725	x 46 x 12 1/2	725
8	angles.....	Stock	2 1/2 x	2 1/2 x 5/16	1,005
2	".....	C.L.B.H.		5 lb.	350
1	".....	C.L.B.H.	3	x 2 1/2 x 5 1/16	32
1	".....	C.L.B.H.	3 1/2 x	2 1/2 x 3/8	86
1	plate.....	B. C.	212	x 42 x 15 lb.	875
1	channel.....	Stock	6	x 8	96
1	angle.....	E. F.	3	x 3	305
2	".....	E. F.	3	x 4	885
2	plates.....	B. C.	43	x 84 x 15 lb.	472
3	".....	B. C.	37	x 84 x 15 lb.	322
2	".....	B. C.	105	x 48 x 15 lb.	861
1	".....	B. C.	127	x 11 x 15 lb.	110
1	".....	B. C.	10	x 60 x 15 lb.	46
1	".....	B. C.	12	x 63 x 15 lb.	50
1	".....	B. C.	34	x 30 x 15 lb.	91
11	floor angles.....	Stock	2 1/2 x	2 1/2 x 5 lb.	10,536
18	floor angles.....	E. F.	3	x	3,448

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No.	Item.	Mark.	Dimensions.	Weight.
9	plates.....	Stock	6 x 1/2	1,490
1	".....	Stock	6 x 3/4	190
1	".....	A. H.	1,115 x 18	x 10 lb. 140
1	".....	A. H.	72 x 22	x 10 lb. 105
2	".....	A. H.	125 x 18	x 10 lb. 305
1	".....	A. H.	121 x 22	x 10 lb. 194
	1 plate.....	A. H.	25 x 96	x 10 lb. 163
346	2 plates.....	A. H.	20 x 128	x 10 lb. 373
	2 ".....	A. H.	99 x 23	x 10 lb. 313
1	2 ".....	A. H.	23 x 110	x 10 lb. 182

NOTE.—Above plates and shapes are scattered through the yard. The corrugated plates are in the old machine shop.

347	13 bronze angles,	4 1/2 x 3 3/8	1,972 lb..	In yard near developing shed.
	110 ft. of brass angle,	1 1/4 x 1 1/4	140 lb..	In main store-room.
	12 brass angles,	4" x 4 1/2 x 3,8..	465 lb..	
	1 bronze plate,	96 x 15	52 lb..	
	14 bronze plate,	36 x 9 x 1/4..	356 lb..	
	4 bronze plate,	120 x 12 x 3/16..	339 lb..	
	2 bronze plate,	70 x 21 x 3/16..	172 lb..	
	2 bronze plate,	80 x 40 x 1/4..	504 lb..	
	1 bronze plate,	34 1/2 x 9 3/4 x 1/4..	25 lb..	In yard developing shed.
	2 bronze plate,	188 x 70 x 1/4..	58 lb..	
	1 bronze plate,	110 x 40 x 3/16..	226 lb..	
	1 bronze plate,	72 x 36 x 1/4..	189 lb..	
	4 bronze plate,	48 x 48 x 3/16..	552 lb..	
	2 bronze plate,	36 x 31 x 1/4..	170 lb..	

2,643 lb.

5 pieces 3" W. I. pipe for stanchions.....	Alongside blacksmith shop.
11,689 ft. Ga. pine 8" x 8" for gun foundations.....	
1,350 ft. Ga. pine 10" x 12" mis. foundations.....	In yard near joiner shop.
1,560 ft. Ga. pine 8" x 12" mis. foundations.....	
5,260 ft. Ga. pine 12" x 14" mis. foundations.....	
348 30,637 ft. Ga. pine 3 1/2" x 3 5/8" decking dressed four sides.....	In carpenter shop.
7,442 ft. Ga. pine 4" x 4" decking dressed four sides.....	
27,200 5/8 inch deck bolts, galvanized.....	In store-room.
11,050 ft. 1" white pine, fire proofed.....	Joiner work.
3,040 ft. 1" white pine, fire proofed. Joiner work.....	
3,204 ft. 2" white pine, fire proofed.....	
539 ft. 1" quartered oak, fire proofed.....	In joiner shop annex.
986 ft. 1/2 quartered oak, fire proofed.....	
3,204 ft. 2" quartered oak, fire proofed.....	
15,152 ft. 1" white pine for stock.....	
3,100 ft. 1 1/2" white pine for stock.....	In developing shed.
6,100 ft. 2" white pine for stock.....	
15 pieces 2 1/2" drainage pipe W. I. galvanized.....	
2 pieces 1 1/2" drainage pipe W. I. galvanized.....	
19 pieces 5" drainage pipe W. I. galvanized.....	In copper shop.
24 pieces 4" drainage pipe W. I. galvanized.....	
18 pieces 2 1/2" drainage pipe W. I. galvanized.....	
3 pieces 10" drainage pipe W. I. galvanized.....	
5 pieces strainers drainage pipe W. I. galvanized.....	Old machine shop.
2 pieces 10" drainage pipe W. I. galvanized.....	
1 piece 4" drainage pipe W. I. galvanized.....	On ground at bow of Galve-ton.
2 pieces 2 1/2" drainage pipe W. I. galvanized.....	
349 2 fittings for 2 1/2" pipe.....	
14 pieces 4" copper pipe, fire main.....	
2 pieces 3 1/2" copper pipe, fire main.....	Copper shop and old machine shop.
1 piece 3" copper pipe, fire main.....	
18 pieces 2 1/2" copper pipe, fire main.....	
2 pieces 2" copper pipe, fire main.....	
176 flanges, composition.	

16 pieces, scupper castings, composition	Machine shop.
2 pieces, scupper castings, composition	Foundry.
18 strainers, drainage, cast iron, galv.....	Machine shop.
18 N. P. Glove valves, No. 352. Sanitary details.....	Main storeroom.
6 N. P. Glove valves, No. 353. Sanitary details.....	
4 N. P. Glove valves, No. 263. Sanitary details.....	
25 valves, hose, No. 333. Fire main.....	
15 Glove stop valves, No. 233. Fire main.....	Machine shop.
65 comp. flanges, 3 1/2.	
23 comp. flanges, 2 1/2. Fire main and flushing main..	Machine shop.
2 3" hand deck pumps. Pumping in storeroom.	Main storeroom.
7 N. P. valves, No. 339. Sanitary details.....	
8 plain valves, No. 339. Sanitary details.....	
2 plain valves, No. 351. Sanitary details.....	
4 N. P. valves, No. 354. Sanitary details.....	Main storeroom.
11 N. P. valves, No. 342. Sanitary details.....	
8 N. P. valves, 349. Sanitary details.....	Main storeroom.
1 plain valves, No. 349. Sanitary details.....	
350 1 plain valve, No. 356. Sanitary details.....	
1 plain valve, No. 359. Sanitary details.....	
2 plain valves, No. 361. Sanitary details.....	Main storeroom.
30 plain valves, No. 360. Sanitary details.....	
7 safety relief valves. Sanitary details.....	Main storeroom.
6 pieces brass tube. Sanitary details.....	
2 galvanized iron inlet guards. Sanitary details.	Main storeroom.
3 copper slop cans. Sanitary details.	
18 galvanized iron paper holders. Sanitary details.	Main storeroom.
6 brass paper holders. Sanitary details.	
6 N. P. grab rods for urinals. Sanitary details.	Main storeroom.
5 N. P. curtain rings. Sanitary details.	
15 N. P. shower bath rings. Sanitary details.	Main storeroom.
1 enameled urinal complete. Sanitary details.	
4 porcelain urinal complete. Sanitary details.	Main storeroom.
23 brass faucets. Sanitary details.	
4 brass faucets, N. plate. Sanitary details.	Main storeroom.
5 porcelain sinks. Sanitary details.	
6 wash basins complete. Sanitary details.	Main storeroom.
5 3-way brass cocks. Sanitary details.	
3 steam tables, for pantries.	Old machine shop.
5 porcelain bath tubs. Sanitary details.....	Main storeroom.
6 crates slate slabs, for urinals. Sanitary details.....	Main storeroom.
9 large and 6 small marble slabs for wash basins. Sanitary details.....	No. 2 storeroom.
351 2 Hygeia closets complete. Sanitary details....	Main store-room.
4 Richmond closets, complete. Sanitary details.....	
5 rubber curtains. Sanitary details.....	Main store-room.
20 curtain rings (iron). Sanitary details.....	
5 economic heaters. Sanitary details.....	Main store-room.
4 copper tanks (copper shop) 680 lb. Sanitary details..	
2 copper tanks, 220 lb. Sanitary details.....	In copper shop.
8 pumps, Douglas. Sanitary details.....	On board ship.
1 valve, composition, No. 330. Sanitary details.....	In main store-room.
4 valve, composition, No. 335. Sanitary details.....	
2 valve, composition, No. 336. Sanitary details.....	Aboard floating mch. shop.
1 valve, composition, No. 95. Sanitary details.....	
1 valve, composition, No. 331. Sanitary details.....	Aboard floating mch. shop.
1 valve, composition, No. 94. Sanitary details.....	
2 pieces sheet brass, for steering stand.....	In main store-room.
11,640 lbs. galv. sheet iron for ventilating ducts.....	In old machine shop.
4 fair leader chocks on main deck Galveston.	In punch shed.
1 armor plate, 122 x 73 x 50 lbs. 3110.....	
1 armor plate, 104 x 60 x 50 lb. 2300.....	
1 armor plate, 121 x 75 x 50 lb. 3225.....	
1 armor plate, 170 x 72 x 50 lb. 4400.....	
1 armor plate, 144 x 69 x 50 lb. 3800.....	
1 armor plate, 168 x 69 x 50 lb. 4125.....	
1 armor plate, 56 x 69 x 50 lb. 1340.....	
1 armor plate, 58 x 72 x 50 lb. 1470.....	

352	25 coal bunkers.....	
	5 ceiling.....	
1	electric rudder, contact making device.....	
2	electric helm indicators on brass standards.....	
1	electric helm indicator without standard.....	
1	electric steering telegraph transmitted on brass stand- ard with magneto generator.....	
1	electric steering telegraph indicator on brass standard with magneto bell.....	
1	electric steering telegraph indicator, without standard and magneto bell.....	
2	electric engine telegraph transmitters on brass stand- ards with megneto generators.....	
2	electric engine telegraph indicators without standard and magneto bells.....	In main store-room.
2	electric speed revolution indicators on brass standards	
2	electric speed revolution contact makers and bands for shafts.....	
10	electric solenoid whistle alarms.....	
1	electric solenoid whistle switch.....	
3	U. S. bells, 2 1/2" W. W. T.....	
3	U. S. push buttons, W. W. T.....	
3	W. T. telephone sets, each consisting of sheet brass box with W. T. push buttons, brass telephone hood and Navy Standard W. T. bell, 3", mounted on same.....	
353	1 W. T. telephone set, consisting of sheet brass box with two point telephone transfer switch, 2 drop W. T. annunciator, cast brass telephone hood, W. T. push button mounted on same, and Navy Standard W. T. bell, 3",	
1	W. T. telephone set, consisting of sheet brass box, 4 point telephone transfer switch, four drop W. T. annunciator, cast brass telephone hood, W. T. push button mounted on same, and Navy Standard W. T. Bell 3".	
163	lenses, air ports and dead lights.....	Main store-room.
1012	lbs. rubber.....	Main store-room.
50	air port frames, 11".....	Machine shop.
50	air ports rings, 11".....	Machine shop.
32	air port frames, 9".....	Machine shop.
32	air port rings, 9".....	Machine shop.
1	lot fittings for air ports.....	Machine shop.
69	dead light frames.....	Machine shop.
69	dead light frames, magazines.....	Machine shop.
3	magazine, light hones.....	Machine shop.
5	magazine, light hones.....	Foundry.
2	cast steel frames, ash chute.....	Machine shop.
1	lot gratings, W. I. uptakes.....	Machine shop.
650	dogs for W. I. doors.....	Machine shop.
359	wedges.....	Machine shop.
350	sockets and flanges for W. T. doors.....	Machine shop.
179	handles and flanges for W. T. doors.....	Machine shop.
	156 hinges and flanges and hatches.....	Machine shop.
354	45 angle door frames.....	Near bending slab.
	45 angle bulkhead frames.....	Near bending slab.
8	V. S. doors.....	Near Galveston.
2	hatch covers, 27" x 27", for blower.....	Near bending slab.
1	hatch cover, type 0", platform deck.....	Near bending slab.
2	hatch connings, type 0", platform deck.....	Near bending slab.
4	mart rings.....	Near bending slab.
4	pads for hatches.....	Machine shop.
24	hinge pads, hatch.....	Machine shop.
41	hinge pads, hatches.....	Blacksmith shop.
136	hinge pads, hatches.....	Blacksmith shop.
64	coaling scuttles, complete except gratings.....	In machine shop.
37	gratings for coaling scuttles.....	In machine shop.
95	cases cellulose.....	In No. 2 store-room.

277 cases cellulose.....	In old pattern shop.
10 5" gun mounts.....	In yard.
2 boxes W. T. doors for gun mounts.....	In No. 2 store-room.
2 galley ranges 7".....	In No. 2 store-room.
50 battle lanterns.....	In electric store-room.
24 deck lanterns.....	In electric store-room.
13 deck lights.....	In electric store-room.
1 capstan and windlass complete.....	In yard abreast Galveston.
1 lot spare parts for above.....	In main store-room.
1 folding bunk.....	In main store-room.
1 box medical outfit.....	Sup. Constrs. office.
355 2 bases, cast steel, anchor cranes.....	Outside machine shop.
2 booms, wrought steel, anchor cranes.....	In machine shop.
2 centre pins, forged steel, anchor cranes.....	In machine shop.
4 bushings, brass, anchor cranes.....	In machine shop.
4 brass wrought steel, anchor cranes.....	Outside machine shop.
8 bolts, wrought steel, anchor cranes.....	Outside machine shop.

Machinery and material of U. S. Galveston,

classified according to groups as per weight instructions of Bureau of Steam Engineering, showing percentage of completion of subjects and groups; also summary sheet, showing percentages of completion and amount earned by contractors.

GROUP I.—ENGINE MAIN CYLINDERS.

Item.	Remarks.	Per cent. Item.	Per cent. Group.
1. H. P. cylinders.....	Cylinders all machined in course of erection. Shop.	95	
2. I. P. cylinders.....			
4. L. P. cylinders.....			
5. Relief & drain valves & receiver safety valves.	All relief and safety valves received. Pads on cylinders drilled. Drain valves rec'd in part.	92	
356 6. Main receiver piping.....	Ship joints in place. Pipes made, but flanges not made.	92	93
7. Main piston rod and valve stem stuffing boxes & packing.	All packing in store-room. Piston rod stuffing boxes made and in place; glands made. Valve steam stuffing boxes in place; glands made.	95	

GROUP II.—SHAFTING.

1. Main crank shafts.....	Done except reaming bolt holes and cutting eccentric keyways.	98	
2. Main line shafts.....	Done except for reaming bolt holes.	99	
3. Main propeller and stern tube shafts.	Done and in place.....	100	99
4. Main thrust shafts.....	Done.....	100	
5. Special coupling.....	Done.....	100	
6. Main shaft coupling bolts and nuts.	Done.....	100	

357 GROUP III.—MAIN ENGINE FRAMING & BEARINGS.

Item.	Remarks.	Per cent. Item.	Per cent Group.
1. Bed plates, etc.....	Machine work on bed plates complete, except for drilling and reaming holes for bolting down four middle columns of one engine. Bearing shoes completed. Brasses and caps to be bored and faced off on ends. Foundation bolts to be made.	93	
2. Columns & tie-rods, bolts and nuts.	Long diagonal athwartship and horizontal athwartship braces and sleeves not made. Other braces partly machined, but not fitted. Columns are erected, but not drilled for strong-backs or stays or reversing shaft brackets; strong-backs being fitted. Four columns are not bolted down, and holes in bed plates are not drilled for these.	80	
358 3. Crosshead guides with bolts & nuts.	All made but not bolted in place; holes for bolting in place not drilled.	85	88
4. Thrust bearings with bolts and nuts.	All ready to go into ship, except for foundation bolts and adjusting wedges.	99	
5. Line shaft, bearings, etc.....	Complete, except the foundation bolts.	99	
6. Stern tube & strut bearings, etc.	Complete and in place.....	100	
7. Bulkhead and stuffing boxes around shafting.	Partly machined.....	50	

GROUP IV.—RECIPROCATING PARTS OF MAIN ENGINES.

1. H. P. pistons.....	All machined, except for turning to suit bore of cylinders and fitting piston rings.		
359 2. I. P. pistons.....	Inner piston rings for both L. P. pistons to be made, and all piston sprins.	97	
4. L. P. pistons.....	Four outer L. P. piston rings to be made.		
5. Piston rods.....	All machined except grinding and turning taper end and threading.	95	
6. Crossheads.....	Complete. Are part of piston rods.		96
7. Connecting rods.....	All machined but one, whose forked end is not finished. Crosshead pins partly machined. Brasses finished except scraping to fit their pins.	96	

GROUP V.—MAIN ENGINE VALVE GEAR.

Item.	Remarks.	Per cent. Item.	Per cent. Group.
1. Eccentrics.....	All turned out but two, which are faced ready to bolt together; none fitted to shaft. No key-ways cut or slotted, or bolting holes worked out.	85	
360 2. Eccentric straps and bolts.	All done but scraping to fit....	97	
3. Eccentric rods and bolts.....	Practically complete; some fitting required.	98	
4. Links & blocks.....	Done.....	100	
5. H. P. valves.....	Valve bodies and followers made	87	92
6. I. P. valves.....	Valve rings require fitting to chests; two are missing.		
8. L. P. valves.....	Practically done.....	98	
9. Valve stems, etc., and balance pistons.	Partly machined.....	86	
10. Valve chest covers and heads..	Nearly completed.....	90	
12. Suspension links & crosshead guides.	Ready for erecting.....	90	
361 13. Reversing engine & gear.	Reverse shafts complete but for key-ways. Reverse shaft brackets made, but not in place nor fitted to shaft. Reverse arms complete except one partly machined. Reversing engine complete.	90	

GROUP VI.—MAIN CONDENSERS.

1. Main condensers, shells, heads, tubes, etc.	Condensers in place in ship. Tubes packed and tested. Water chests in shop. Practically complete.	98	98
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GROUP VII.—MAIN AIR AND CIRCULATING PUMPS.

1. Main air pumps, covers, buckets, rods, etc.	All parts complete ready for assembling. Rods not yet turned taper to fit crossheads.	90	
3. Circulating pumps, complete to piping.	Castings made and machined; not bolted up; bearings and stuffing boxes partly mach'd; shafts and runners on hand.	65	92
362 4. Circulating pump engines.	Circulating pump engines complete.	100	

GROUP VIII.—PROPELLERS.

1. Main propellers.....	Complete and in place on ship..	100	100
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GROUPS IX & X.—BOILERS AND FITTINGS (includes spare parts).

1. Boilers.....	Complete and in place on ship..	100	100
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GROUP XI.—SMOKE PIPES AND UPTAKES.

1. Uptakes, including all weights from boiler to base of smoke pipe.	Complete.....	100	83
2. Smoke pipes, including guys, etc.	All smoke pipe sections, hoods, and casings are made, ready for assembling; guys not provided.	60	

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GROUP XII.—STEAM & EXHAUST PIPES & VALVES.

Item.	Remarks.	Per cent. Item.	Per cent. Group.
1. Main steam pipes and valves including pipe, flanges, bolts and nuts, hangers and fittings.	Main throttle valve castings made and partly machined. Five of the six slip joints in main and dynamo steam systems are cast and about 80% machined. 1 T piece complete in P. E. R. next to stop valve. All steel steam pipe on hand, all steel flanges complete except drilling. The 6 carpentier valves are about 75% complete.	45	
2. Auxiliary steam pipes and valves.	No work done.....	0	
3. Branch steam pipes, etc.....	No work done.....	0	23
4. Main exhaust piping.....	Pipes made; no flanges.....	80	
5. Auxiliary exhaust piping.....	12 stop valves made (4 stops on main condensers; 4 dynamo throttle and 4 dynamo exhaust).	0	
364 6. Branches of exhaust piping.	No work done.....	0	
7. Escape pipes, whistles.....	Escape pipe sections made; whistle and siren bought and on hand.	90	

GROUP XII.—SUCTION AND DISCHARGE PIPES AND VALVES.

Item.	Remarks.	Per cent. Item.
1. Main injection (bilge and sea) pipes, valves, and fittings.	All valves except safety sluice valve casings are made; gates for latter also made; pipes (short pieces) not made; safety gear made except fitting in place.	93
2. Main outboard delivery pipes, valves and fittings.	Valves made and in place. Pipes made and shaped, but flanges not made.	95
3. Main air pump, suck and discharge pipes, valves and fittings.	Suction pipes are made and partly fitted. Discharge pipes made in straight lengths; no bends or flanges. Valves as checked off in list.	56
365 4. Main and aux. feed pump pipes.	Suction pipes and branches to pumps about 85% done. No discharge pipes made. Valves as per list.	
5. Other auxiliary pump pipes, valves and fittings.	Fire main and valves in engine and fire-room 85% complete. No pump branches made. Valves as per list.	
6. Pump relief valves.....	Valves in store-room.....	
7. Blow pipes and valves, etc....	All valves made and installed; pipes 95% complete.	

GROUP XIV.—LAGGING AND CLOTHING.

Boiler lagging in place, also lagging of pumps, ash hoist engines, workshop 366 and blower engines, ice machine and auxiliary condensers.	Sum set aside for lagging of main engine cylinders, main condensers, circulating pump engines, and all pipes, valves and separators; also feed and hotwell tanks, feed heaters and evaporators and stillers, \$4,000.00.
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GROUP XV.—FLOORING, GRATINGS, ETC.

Item.	Remarks.	Per cent. Item.	Per cent. Group.
1. Floorplates, supports, etc.	Floorplates on hand.	50	
2. Gratings, supports, bolts, etc.	63% of gratings are made and about one-third of these in place; supports made in part. Material on hand.	55	
3. Ladders	Material for making ladders on hand; no work done.	25	45
4. Hand rails, supports, etc.	Material on hand in part.	35	
5. Guards, etc.		0	

GROUP XVI.—AUXILIARIES.

367	1. Main feed pumps.	In place in ship.	100	
	2. F. & B. pumps.	In place in ship.	100	
	4. Wtare service pumps.	In place in ship.	100	
	5. Hotwell pumps.	In place in ship.		
	6. Auxiliary condensers, etc.	In place in ship.	100	96
	8. Turning engines and gear.	Circulating pump engines are used in turning engines. The worm wheels are made; shafts and worms not made; shaft bearings partly machined.	85	
	9. Ash hoists.	Engines in place; small forgings made for ventilator doors.	80	
10.	Blowers and engines.	On hand but not installed.	95	

GROUP XVII.—FITTINGS AND GEAR.

	1. Feed tanks and fittings.	Feed tanks in place; some fittings required.	96	
368	2. Oil, tallow, waste and soda tanks and fittings.	All tanks made except the 2 600-gal. storage oil tanks.	75	
	3. Water service, etc.	Small quantity of material on hand.	0	
	4. Lubricating gear.	3/8-inch brass pipe and some small fittings on hand.	12	
	5. Lifting gear.	Not made.	0	44
	6. Gear for working valves from deck.	Safety valve easing gear about 80 % complete. Gear for working four main stop valves not made; nor gear for Carpenter valves.	40	
	7. Gauges, etc.	All in store-room except telegraphs.	40	
	8. Separators.	Main steam line separators complete; auxiliary and dynamo steam separators not made.	60	
369	9. Gear for operating engine.	Partly made.	30	
	10. Counter gear.	None made.	0	
	11. Indicator gear.	Some forgings and castings made and partly machined.	25	
	14. Feedwater heaters.	All parts ready for assembling.	75	

GROUP XIX.—STORES, TOOLS AND SPARE PARTS.

	1. Tools in workshop.	In place in workshop on ship; small details necessary.	98	
	2. Other tools, racks, etc.	Wrenches, etc., 85% complete; trammels not made; ash buckets 90% complete; no coal buckets.	65	
	3. Duplicate parts.	These are mostly made except spare crank shaft section and propeller blades.		35
	5. Hose and racks.	Not made or purchased.	0	
16.	Indicators, etc.	In storeroom.	100	

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GROUP XX.—MISCELLANEOUS MACHINERY, ETC.

GROUP XX.—MISCELLANEOUS MACHINERY, ETC.				Per cent Item.	Per cent. Group.	
Item.		Remarks.				
1. Distilling plant, etc.....		Installed.....		95		
2. Heating plant, etc.....		Traps on hand.....		0	66	
3. Refrigerating plant, &c.....		Ice machine, freezing tank, and spare parts on hand.		85		
Group No.		Approximate wt., lbs.	Estimated cost per lb.	Percentage of completion.	Estimated value of work when complete.	Estimated value of work done.
	General superintendence.....			77	15,000	11,550
	Drafting.....			74	20,000	14,850
	Trial trip.....				5,000	
	Installation of machinery.....			30	43,000	12,900
	I. Cylinders, etc.....	54,804	.12	93	6,576	6,116
	II. Shafting, etc.....	45,749	1.40	99	64,048	63,408
	III. Engine framing, bed plates, etc.....	51,121	.35	88	17,891	15,744
	IV. Reciprocating parts....	17,689	2.25	96	39,800	38,208
371	V. Main valve gear.....	13,680	1.40	92	19,152	17,620
	VI. Main condensers.....	26,279	.30	98	7,884	7,726
	VII. Main air & cir. pumps & engs.....	13,400	.50	92	6,700	6,164
	VIII. Propellers.....	11,499	.46	100	5,290	5,290
IX & X.	Boilers & fittings.....	284,682	.23	100	65,477	65,477
	XI. Smoke pipes and up- takes.....	51,520	.12	83	6,182	5,131
	XII. Steam & exhaust pipes & valves.....	29,393	.40	23	11,757	2,705
XIII.	Suc. & dis. pipes & valves.....	41,982	.50	56	20,991	11,755
	XIV. Lagging & clothing....				4,000	
	XV. Flooring, gratings, &c..	36,637	.08	45	2,931	1,319
	XVI. Auxiliaries.....	44,000	.35	96	15,400	14,884
XVII.	Fittings and gear.....	38,212	.28	44	10,699	4,708
XIX.	Stores, tools, and spare parts.....			35	10,750	3,760
XX.	Miscellaneous machinery.....	40,938	.30	66	12,281	8,106
					410,809	317,421
	Allowed extra...				170	55
					410,979	317,476
					317,476=77.25%	
					410,979	

372 (XIV.) Boiler lagging in place, also lagging of pumps, ash hoists, blower, and machine shop engines, ice machines, and auxiliary condensers, which is included in cost of those items. Estimate under this group covers lagging and clothing of main engine, cylinders, circulating pump engine cylinders, main condensers, feed and hotwell tanks, feed heaters, separators, all steam and exhaust pipes and valves, and evaporators and distillers.

(XIX.) Spares for boilers, pumps, distilling plant, blowers, ice machine, workshop, and ash hoist engines, and auxiliary condensers and pumps included in those items.

*Details of machinery, tools, & spare parts of U. S. S. Galveston,
under construction at the works of William R. Trigg Company.*

GROUP I.—MAIN ENGINE CYLINDERS.

	Location.
2 H. P. cylinders, complete, in course of erection.....	Machine shop.
2 H. P. packing rings for liners in place.....	Machine shop.
2 H. P. cylinder heads, complete.....	Machine shop.
2 I. P. cylinders, complete, in course of erection.....	Machine shop.
2 I. P. packing rings, for liners, in place.....	Machine shop.
2 I. P. cylinder heads, complete.....	Machine shop.
4 L. P. cylinders, complete, in course of erection. To be drilled for reversing shaft brackets.....	Machine shop.
2 L. P. packing rings, for liners in place.....	Machine shop.
2 L. P. packing rings, for liners on floor, complete.....	Machine shop.
All cylinder & valve chest linings complete and in place.....	Machine shop.
2 valves #362-V.7 cylinder relief.....	Main store-room.
2 valves #363-V.7 cylinder relief.....	
373 1 valve #364-V.7 cylinder relief. Flanges to be drilled.....	Main store-room.
4 valves #21-V-7 H. P. cyl. relief top & bot. P. & S.....	Main store-room.
4 valves #22-I. P. cyl. relief top & bot. P. & S.....	Main store-room.
8 valves #23-V-7 1st and 2nd L. P. relief top. & bot. P. & S.....	Main store-room.
2 valves #24-V-7 I. P. rec'r. relief P. & S.....	Main store-room.
2 valves #25-V-7. L. P. rec'r. relief P. & S.....	Main store-room.
2 valves #26-V.7. I. P. jacket relief P. & S. Flanges to be drilled.....	Main store-room.
4 valves #27-V-7 1st & 2nd L. P. relief P. & S.....	
2 valves #32-V-7 main exhaust pipes relief.....	Main store-room.
4 L. P. cylinder head heads, complete.....	Machine shop.
8 cylinder head hoods, complete.....	Machine shop.
4 complete stuffing boxes & glands for piston rods in place.....	Machine shop.
4 stuffing boxes without glands, in place.....	Machine shop.
2 L. P. valve stem stuffing boxes, complete, with glands in place.....	Machine shop.
2 L. P. valve stem stuffing boxes without glands com- plete.....	Machine shop.
4 H. P. valve stuffing box glands, complete.....	Machine shop.
4 I. P. valve stem stuffing box glands, complete.....	Machine shop.
2 L. P. valve stem stuffing box glands, complete.....	Machine shop.
4 L. P. valve chest covers, complete.....	Machine shop.
4 piston rod stuffing box glands, complete.....	Machine shop.
374 12 valve chest covers, complete.....	Machine shop.
6 stuffing boxes without glands for same, com- plete.....	Machine shop.
2 main rec'r. expansion joints, in place, complete.....	Machine shop.
2 main rec'r. elbows in place complete.....	Machine shop.
2 main rec'r. elbows, on floor, complete.....	Machine shop.
4 L. P. valve faces in place.....	Machine shop.
3 L. P. bal. piston cylinders, complete.....	Machine shop.
6 bal. piston covers, complete.....	Machine shop.
6 valve stops, bolts & nuts, complete.....	Mach. shop (gallery).
4 pcs. main rc'r. pipe flanges not fitted or brazed.....	Copper shop.
1 bx. met. packing for main engine, complete.....	Main store-room.

GROUP II.—SHAFTING.

4 secs. main crank shaft, half of coupling bolt holes to be drilled, all to be reamed, eccentric key- ways to be cut.....	Machine shop.
2 secs. line shaft, bolt holes to be reamed.....	Machine shop.
2 secs. propeller shaft in place, complete.....	On ship.
2 stern tube shafts in place, with nuts and keys for same.....	On ship.
2 main thrust shafts, complete.....	Machine shop.

	Location.
2 main shafts, special couplings, complete	(On ship.
12 bolts & nuts for shafting, in place.....	On ship.
36 coupling bolts, without nuts, main shaft	Machine shop.
12 spl. shaft coupling bolts.....	Machine shop.
52 coupling bolt nuts, main shafting.....	Machine shop.

375 GROUP III.—MAIN ENGINE FRAMING & BEARINGS.

6 secs. main engine bedplates, holes for bolting down four columns to be drilled and reamed, also holes for holding down bolts and for air pump foundation bolts.....	Machine shop.
12 main bearing brasses, lower half to be bored and end spaced.....	Machine shop.
24 distance pieces for same, complete.....	Machine shop.
12 main bearing capps, to be bored and faced.....	Machine shop.
24 main bearing bolts & nuts, complete and in place....	Machine shop.
12 main bearing shoes, complete and in place.....	Machine shop.
24 main engine columns, complete except for drilling for drilling for bolts for strongbacks, reversing shaft brackets, and tie-rods.....	Machine shop.
12 diagonal braces, short, complete.....	Machine shop.
4 fore & aft diagonal braces, flat, machined in part....	Machine shop.
4 fore & aft braces with bosses; some of the bosses to be drilled and key-ways to be cut in ends.....	Machine shop.
8 crosshead guides, bolts & nuts, complete except for drilling for supporting bolts.....	Machine shop.
2 thrust bearings, complete, foundation bolts to be made.....	Machine shop.
2 sole plates for same, complete except for holding down bolts and adjusting wedges.....	Machine shop.
96 bolts & nuts for column feet.....	Machine shop.
24 column nuts, in place.....	Machine shop.
20 thrust shoes.....	Machine shop.
Stern tube & thrust bearings in place of ship.....	On ship.
376 6 main shafts spring bearings, complete except for foundation bolts.....	On ship.
1 bulkhead stuffing box & gland, complete.....	On ship.
4 main engine strongbacks, complete except for fitting and reaming holes.....	Machine shop.

GROUP IV.—RECIPROCATING PARTS OF MAIN ENGINE.

2 H. P. pistons & followers, to be turned for final fit in cyls.....	Machine shop.
4 H. P. piston rings, to be fitted and tongued.....	Machine shop.
2 I. P. pistons & followers, to be turned for final fit in cyls.....	Machine shop.
4 I. P. piston rings, to be fitted and tongued.....	Machine shop.
4 L. P. pistons and followers, to be turned for final fit in cyls.....	Machine shop.
4 L. P. piston rings, to be fitted and tongued.....	Machine shop.
2 I. P. piston rings (inner rings), complete.....	Machine shop.
8 piston rods with solid cross-heads, to receive finishing cut and ends turned taper and threaded.....	Machine shop.
8 piston rod nuts, complete except to milling the size....	Machine shop.
8 crosshead sliders, complete.....	Machine shop.
8 crosshead pins, partly machined (85%).....	Machine shop.
16 piston rod crosshead bolts & nuts, complete.....	Machine shop.
16 half brasses piston rod crossheads, complete.....	Machine shop.
8 piston rod caps, crossheads, complete.....	Machine shop.
377 8 connecting rods, all machined but one, whose forked end required finishing.....	Machine shop.
16 connecting rod half brasses & 8 caps, brasses to be fitted, caps complete.....	Machine shop.
16 connecting rod bolts & nuts, complete.....	Machine shop.
16 set screw rings for connecting rod nuts, complete....	Machine shop.
12 distance pcs. for connecting rod brasses, complete....	Machine shop.

MAIN ENGINE VALVE GEAR.

Location.

16 eccentrics, two of which are unfinished, all require fitting to shaft.....	Machine shop.
16 eccentric straps and bolts, complete, to be scraped and fitted.....	Machine shop.
16 eccentric rods, complete, with brasses and bolts.....	Mach. shop (gallery).
8 links complete.....	Mach. shop (gallery).
8 links blocks with gibs, complete.....	Mach. shop (gallery).
2 H. P. piston valves, ready for assembling.....	Machine shop.
4 I. P. piston valves, ready for assembling.....	Machine shop.
12 piston valve followers for H. P. & I. P. valves, complete.....	Machine shop.
10 H. P. & I. P. piston valve rings, to be fitted.....	Mach. shop (gallery).
4 L. P. valves, complete.....	Machine shop.
4 expansion rings, L. P. valves, in box, complete.....	Machine shop.
2 H. P. valve stems, to be turned at upper end and threaded.....	Machine shop.
4 L. P. valve stems, complete.....	Machine shop.
4 L. P. valve stems, to be turned at upper end and threaded.....	Machine shop.

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GROUP V.—MAIN ENGINE VALVE GEAR.

4 L. P. Bal. pistons, complete.....	Machine shop.
2 I. P. Bal. pistons, complete.....	Machine shop.
1 H. P. Bal. piston, complete.....	Machine shop.
2 H. P. Bal. piston rings, to be fitted.....	Machine shop.
4 I. P. Bal. piston rings, to be fitted.....	Machine shop.
4 L. P. Balance piston rings, to be fitted.....	Machine shop.
2 I. P. valve stem crossheads, with brasses and gibs, to be fitted to guides.....	Machine shop.
4 secs. rev. shaft, complete, except for cutting key ways for reversing arms.....	Machine shop.
6 reverse shaft arms, complete.....	Machine shop.
2 reverse shaft arms, unfinished.....	Machine shop.
8 reversing arm crossheads, complete.....	Machine shop.
8 column brackets for reverse shaft, complete, ready for erecting.....	Machine shop.
8 cap brasses for reverse shafts, complete.....	Machine shop.
4 rev. shaft brackets with brasses and caps, brasses and caps to be finished at ends; bolting flanges to be drilled for bolt holes.....	Machine shop.
2 H. P. valve stem guides with brasses and caps, complete, except drilling bolting flanges and fitting brasses.....	Machine shop.
4 L. P. valve stem guides with brasses and caps, complete, except drilling bolting flanges and fitting brasses.....	Machine shop.
2 I. P. valve stem crosshead guides, ready for erection.....	Machine shop.
379 2 reverse arms for rev. eng. connections, partly machined.....	Machine shop.
16 suspension links and brasses, complete.....	Mach. shop (gallery).
2 reversing engines, complete.....	Mach. shop (gallery).
4 connecting link rods for same, complete.....	Mach. shop (gallery).
2 differential pins for reversing engines, complete.....	Mach. shop (gallery).
2 stub ends of links for reversing engine, 50% done.....	Mach. shop (gallery).
3 sets met. packing for reversing engine (one set for spare), complete.....	Main storeroom.

GROUP VI.—MAIN CONDENSERS.

2 main condenser shells, complete.....	On ship.
4 tube sheets, with tubes and glands in place on ship.....	On ship.
2 water chests for condensers, with valves and rods, complete.....	Machine shop.
4 water chest covers, with zincs in place, complete.....	Machine shop.
2 condenser heads, with zinc in place, complete.....	Machine shop.

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GROUP VII.—MAIN AIR AND CIRCULATING PUMP.

	Location.
2 main air pumps, complete ...	Machine shop.
4 air pump beams.....	Machine shop.
2 air pump shafts.....	Machine shop.
4 air pump links & brasses, long..	Machine shop.
4 air pump links and brasses, short.	Machine shop.
2 air pump crossheads.....	Machine shop.
2 phosphor bronze springs for air pump.	Machine shop.
5 sets piston rod packing for air pump (1 set spare).....	Machine shop.
4 half castings for cir. pump, not complete, holes to be drilled for bolting together.....	In main storeroom.
2 fan wheels for same, 95% done.....	Machine shop.
2 cir. pump shaft glands in halves, complete.....	Machine shop.
2 lignum vitae bearings, cir. pump, rough.....	Mach. shop (gallery).

GROUP VIII.—PROPELLERS.

2 propellers with hubs, bolts, nuts, and caps, complete and in place.....On ship.

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GROUP IX.—BOILERS.

6 boilers, complete and in place.....On ship.

GROUP X.—BOILER FITTINGS.

All grate bars and bearers in boilers.....On ship.
 All bridgewalls and fittings in boilers.....On ship.
 Furnace doors, ash pit doors, and lazy bars in boilers.....On ship.
 All ash pans in place.....On ship.
 All other furnace fittings complete.....On ship.
 Dry pipes and all internal fittings, etc., in place.....On ship.
 382 Zinc hangers, baskets, and bolts in boilers.....On ship.
 All water gauges and safety valves in place on boilers.....On ship.
 6 comp. Ells for main steam connection on boilers.... On ship.
 6 sentinel valves for boilers.....Store-room No. 2.

GROUP X.—BOILER FITTINGS.

1 box, containing 18 test cocks for B. & W. boilers.... On ship (store-room).
 6 comp. fittings for sentinel valves and air cocks, on boilers.....On ship.
 6 fire extinguishers in place on boilers.....On ship.
 Boilers and fittings complete and in place on ship, sentinel valves, test cocks, and steam gauges to be fitted in place.

GROUP XI.—SMOKE PIPES AND UPTAKES.

12 comp. turnbuckles for smoke pipe stays, complete... Mach. shop (gallery).
 2 outer smoke pipes.....On yard.
 2 inner smoke pipes.....On yard.
 4 smoke pipe bases.....On yard.
 2 painter's foot rings, with brackets.....To be assembled and fitted on board.....On yard.
 2 smoke pipe hoods, boilers, complete.....Copper shop.
 All uptakes in place on.....On ship.

383 GROUP XII.—STEAM AND EXHAUST PIPES AND VALVES.

		Location.
2 secs. main steam steel pipe, 6½" x 14' 9".....		Old machine shop.
2 secs. main steam steel pipe, 6" x 10' 4".....		Old machine shop.
2 secs. main steam steel pipe, 6" x 16'.....		Old machine shop.
2 secs. main steam steel pipe, 4" x 3' 9".....	No work done on this material.....	Old machine shop.
2 secs. main steam steel pipe, 6" x 3'.....		Old machine shop.
20 aux. steam steel pipe, 4" x 12'.....		Old machine shop.
6 aux. steam steel pipe, 3½" x 12'.....		Old machine shop.
6 secs. dynamo steam pipe, 4" x 12'.....		Old machine shop.
2 main eng. t'rottle valve castings, partly machined....		Machine shop.
2 throttle valve bonnets, partly machined.....		Machine shop.
6 carpenter valve bodies.....		Mach. shop (gallery).
6 comp., distance pieces for same.....	75 per cent ma- chined.....	Mach. shop (gallery).
6 double pistons and followers for same.....		Machine shop.
384 6 carpenter valve cyl. bodies.....	75 per cent ma- chined.....	Machine shop.
6 cylinder heads for same.....		Machine shop.
6 rough castings for cyl. rings, Carpentier valves.....		Machine shop.
7 two-way cocks for Carpentier valves, rough.....		Machine shop.
2 plug cocks for Carpentier valves, rough.....		Machine shop.
14 triangular flanges, Carpentier valves, partly ma- chined.....		Machine shop.
23 rough comp. castings for Carpentier valves.....		Mach. shop (gallery).
6 hand wheel, 6", for same, complete.....		Mach. shop (gallery).
47 flanges, 4" steel, main steam pipe.....		Mach. shop (gallery).
13 flanges, 6" steel, main steam pipe.....	Bolt holes to be drilled.	Mach. shop (gallery).
16 flanges, 3½" steel, main steam pipe.....		Mach. shop (gallery).
4 flanges, 6½" steel, main steam pipe.....		Mach. shop (gallery).
1 main steam expansion joint casting, 90% complete..		Machine shop.
1 gland for same, complete.....		Machine shop.
2 comp. tees, #603-F, complete.....		Machine shop.
2 main steam expansion joint casting, 90% machined..		Machine shop.
1 main steam tee casting, 90% machined.....		Machine shop.
4 expansion joint stuffing box glands, complete.....		Machine shop.
1 expansion joint gland, main steam line, complete..		Machine shop.
2 comp. sliding sleeves for same, complete.....		Machine shop.
2 manifolds for bolting to throttle valves, com- plete except for drilling bolt holes for securing same.....		Mach. shop (gallery).
2 expansion jt. castings with bolts and glands, com- plete.....		Mach. shop (gallery).
1 sliding sleeve for same, complete.....		Mach. shop (gallery).
1 comp. casting, main steam valve, rough.....		Foundry.
8 Lealie pressure regulators, complete except drilling flanges.....		Main storeroom.
6 valves, No. 612-V-7.....	All complete except drilling bolt holes in flanges.	Main storeroom.
2 valves, 611-V-7.....		Main storeroom.
2 valves, 604-V-7.....		Main storeroom.
6 valves, 610-V-7.....		Main storeroom.
2 valves, 704-V-7.....		Main storeroom.
2 valves, 685-V-7.....		Main storeroom.
2 valves, 605-V-7.....		Main storeroom.
2 valves, 728-V-7.....		Main storeroom.

	Location.
2 valves, 609-V-7.....	Main storeroom.
4 valves, 607-V-7.....	Main storeroom.
4 valves, 606-V-7.....	Main storeroom.
1 valves, 693-V-7.....	Main storeroom.
2 valves, 725-V-7.....	Main storeroom.
2 valves, 659-V-7.....	Main storeroom.
8 valves, 661-V-7.....	Main storeroom.
2 valves, 603-V-7.....	Main storeroom.
2 valves, 662-V-7.....	Main storeroom.
386 12 comp. flanges, 3/4", } Complete except drilling (Mach. shop (gallery)).	
2 comp. flanges, 1", } bolt holes.....	(Mach. shop (gallery)).
4 secs. main exhaust pipe, to be fitted as to length and flanges to be made and brazed on.....	Old machine shop.
4 globe valves, No. 608-V-7, on condensers, complete.....	On ship.
1 chime whistle, 6", complete.....	Main store-room.
1 steam siren, complete.....	Main store-room.
6 secs. escape pipe, sections to be connected and flanges brazed on.....	Old machine shop.
2 comp. tee castings, complete except drilling bolt holes in one flange.....	Floating mach. shop.

GROUP XIII.—SUCTION AND DISCHARGE PIPES AND VALVES.

2 main injection valves, #1, in place.....	On ship.
1 bilge injection valve, #3, in place.....	On ship.
2 auxiliary injection valves, Nos. 53 and 54, in place.....	On ship.
1 bilge injection valve, No. 3, complete.....	Machine shop.
1 McComb strainer for bilge injection, complete.....	Machine shop.
1 McComb strainer for bilge injection, complete.....	On ship.
2 main outboard delivery valves, No. 4, in place.....	On ship.
2 secs. copper pipe, #352, } Cut to length and flanges to } Old machine shop.	
main outboard delivery, } be brazed; two flanges to }	
2 secs. copper pipe, #351, } be made. } Old machine shop.	
main outboard delivery, }	
4 secs. copper pipe, No. 353, 354, 355 and 356, } Old machine shop.	
387 main air pump discharge, flanges to be brazed on.....	
4 secs. copper pipe, #357, 358, 359 and 360, main air pump suction, flanges to be brazed on.....	Copper shop.
1 manifold casting, 62-V-7, partly machined.....	Machine shop.
1 manifold casting, 69-V-7, complete.....	Mach. shop (gallery).
1 manifold casting, 70-V-7, complete.....	Mach. shop (gallery).
1 manifold casting, 46-V-7, complete.....	Mach. shop (gallery).
1 manifold casting, 43-V-7, complete.....	Mach. shop (gallery).
1 manifold casting, 57-V-7, complete.....	Mach. shop (gallery).
2 manifold casting, 61-V-7, not finished, bonnets, valves, fittings for same made.....	Mach. shop (gallery).
1 manifold, 77-V-7, complete.....	On ship.
2 manifold, 67-V-7, complete.....	On ship.
2 manifold, 87-V-7, complete.....	On ship.
1 manifold, 74-V-7, complete.....	On ship.
1 manifold, 59-V-7, complete.....	On ship.
1 manifold, 76-V-7, complete.....	On ship.
1 manifold, 75-V-7, complete.....	On ship.
1 manifold, 58-V-7, complete.....	On ship.
1 manifold, 45-V-7, complete.....	On ship.
1 manifold, 49-V-7, complete.....	On ship.
1 valve, 63-V-7, complete.....	Mach. shop (gallery).
388 2 valves, 17-V-7, complete, } Except for drilling } Dock eng. store-room.	
2 valves, 97-V-7, complete, } bolt holes in } Dock eng. store-room.	
6 valves, 7-V-7, complete, } flanges. } Dock eng. store-room.	
4 valves, 12-V-7, complete, } } Dock eng. store-room.	
6 valves, 6-V-7, complete, } } On ship.	
4 valves, 6-V-7, complete, } } Main store-room.	
2 valves, 98-V-7, complete, } } Main store-room.	
2 valves, 89-V-7, complete, }	

		Location.
1 valve, 90-V-7, complete,	} Except for drilling bolt holes in flanges.	Main store-room.
4 valves, 10-V-7, complete,		Main store-room.
8 valves, 114-V-7, complete,		Main store-room.
6 main feed stop valves on boilers, complete.....		On ship.
1 valve, 15-V-7, complete.....		On ship.
6 valves, 12-V-7, complete.....		On ship.
4 valves, 39-V-7, complete.....		On ship.
2 valves, 83-V-7, complete.....		On ship.
6 valves, 37-V-7, complete.....		On ship.
2 valves, 66-V-7, complete.....		On ship.
2 valves, 5-V-7, complete.....		On ship.
2 valves, 50-V-7, complete.....		On ship.
2 valves, 51-V-7, complete.....		On ship.
2 valves, 52-V-7, complete.....		On ship.
2 valves, 82-V-7, complete.....		On ship.
389 2 valves, 72-V-7, complete.....		On ship.
3 valves, 41-V-7, complete.....		On ship.
2 valves, 13-V-7, complete.....		On ship.
2 valves, 11-V-7, complete.....		On ship.
1 valve, 85-V-7, complete.....		On ship.
1 valve, 86-V-7, complete.....		On ship.
2 valves, 36-V-7, complete.....		On ship.
1 valve, 55-V-7, complete.....		On ship.
2 valves, 56-V-7, complete.....		On ship.
6 valves, 16-V-7, complete.....		On ship.
1 manifold, 47-V-7, complete.....		On ship.
1 valve, 12-V-7, complete.....		On ship (store-room).
1 valve, 7-V-7, complete.....		On ship (store-room).
4 valves, 8-V-7, complete.....		On ship (store-room).
2 valves, 13-V-7, complete.....		On ship (store-room).
6 valves, 14-V-7, complete.....		On ship (store-room).
2 valves, 18-V-7, complete.....		On ship.
Fittings for surface and Bot. blow system from 109 to		
112, inc., in place, complete.....		On ship.
1 comp. Ell, 103-F, complete.....	} Except for drilling bolt holes in flanges.	Dock eng'r. store-room.
2 comp. Ells, 101-F, complete.....		Dock eng'r. store-room.
1 comp. Ells, 108-F, complete.....		Dock eng'r. store-room.
390 1 comp. elbow, #107-F, complete.....	} Except drilling bolt holes in flanges.....	Dock Eng'r. store-room.
2 gate valves, #84-V-7, complete.....		Dock Eng'r. store-room.
2 fittings, #127-F, complete.....		On ship.
1 comp. elbow, #104-F, complete.....		On ship.
1 comp. casting for Hotwell stuffing box, complete.....		On ship.
1 comp. cross fitting, #131-F, complete.....		On ship.
2 comp. castings, #122-F, complete.....		On ship.
1 comp. cross fitting, #124-F, complete.....		On ship.
1 comp. fitting, #104-F, complete.....		On ship.
1 comp. tee casting, #131-F, complete.....		On ship.
1 comp. fitting, #124-F, complete.....		On ship.
1 sea valve, #20-V-7, complete.....		On ship.
1 comp. fitting, #100-F, complete.....		On ship.
4 comp. fittings, #128-F, complete.....		On ship (store-room).
42 secs. copper pipe, #355, 356, 503, 502, 419, 413, 417, 415, 414, 634, 371, 639, 390, 381, 382, 628, 420, 462, 370, 397, 401, 396, 627, 637, 634, 615, 363, 613, 616, 617, 618.....		Copper shop.
2 secs. copper pipe, #513, pipes fitted ready for brazing flanges.....		Copper shop.
2 secs. copper pipe, #562.....		Copper shop.
391 16 secs. copper pipe, #361, 362, 393, 372, 392, 400, 409, 410, 411, 412, 422, 421, 486, 487, 621, 639, }	Pipes fitted, flanges ready for brazing.....	On ship.
All blow pipes from 450 to 483, inc., complete, except 477 and 478; pipes fitted, flanges ready for brazing.....		
54 comp. flanges, 2", complete.....		Mach. shop (gallery).

	Location.
36 comp. flanges, 3 1/2", complete.....	Mach. shop (gallery).
3 comp. flanges, 2", B. H., complete.....	Mach. shop (gallery).
16 comp. flanges, 3/4", complete.....	Mach. shop (gallery).
12 comp. flanges, 3 1/2", complete.....	Mach. shop (gallery).
20 comp. flanges, 2", complete.....	Mach. shop (gallery).
1 comp. flange, 2", B. H., complete.....	Mach. shop (gallery).
11 comp. flanges, 3", complete.....	Mach. shop (gallery).
13 comp. flanges, 1 1/2", complete.....	Mach. shop (gallery).
10 comp. flanges, 3/4", complete.....	Mach. shop (gallery).
22 comp. flanges, 1", complete.....	Mach. shop (gallery).
6 comp. flanges, 12", complete.....	Old machine shop.
51 comp. flanges, 1 1/4", complete.....	Old machine shop.
15 comp. flanges, 2", complete.....	Old machine shop.
12 comp. flanges, 3 1/2", complete, H. P.....	Old machine shop.
15 comp. flanges, 2", complete.....	Old machine shop.
2 comp. flanges, 4", complete.....	Old machine shop.
392 4 relief valves, #28-V-7, for main feed pumps.....	Main store-room.
2 relief valves, 29-V-7, for fire and bilge pumps.....	Main store-room.
2 relief valves, 29-V-7, for fire and bilge pumps.....	Main store-room.
2 relief valves, 29-V-7, for water service pumps.....	Main store-room.
2 relief valves, 29-V-7, for hot well pumps.....	Main store-room.
2 relief valves, 30-V-7, for dis- tillers.....	Main store-room.
1 relief valve, 347-V-7, on fire main, B. H. 17.....	Main store-room.
1 relief valve, 347-V-7, on flushing main, B. H. 17.....	Main store-room.
1 relief valve, 348-V-7, for pump in firemen's washroom.....	Main store-room.
1 relief valve, 348-V-7, distiller discharge to tanks.....	Main store-room.
2 relief valves, 31-V-7, distiller pipes to tank in hold.....	Main store-room.
2 relief valves, 38-V-7, shaft bilge pumps, P. & S.....	Main store-room.
393 4 comp. fittings, #129-F, for zinc boxes, complete.....	Mach. shop (gallery).
13 comp. hand wheels, 7 1/2" dia., complete.....	Mach. shop (gallery).
10 comp. hand wheels, 15" dia., complete.....	Mach. shop (gallery).
2 gate valve bodies, rough.....	Mach. shop (gallery).
2 comp. stuffing box glands, complete.....	Mach. shop (gallery).
1 lot of "U" shaped zincs for zinc boxes, complete.....	Mach. shop (gallery).
2 zinc box castings, #121-F, flanges not drilled.....	Mach. shop (gallery).
23 bonnets for zinc boxes, complete but not drilled.....	Mach. shop (gallery).
26 beam forgings, steel, for main feed valves, partly mach'd.....	Mach. shop (gallery).
12 steel forgings, fulcrums for same, partly machined.....	Mach. shop (gallery).
12 main feed check valves, bonnets and bodies 80% machined.....	Mach. shop (gallery).
2 comp. hand wheels, 12", complete.....	Mach. shop (gallery).
4 comp. hand wheels, 6", complete.....	Mach. shop (gallery).
2 comp. hand wheels and valve stems, 4", complete.....	Mach. shop (gallery).
7 comp. valve stems, complete.....	Mach. shop (gallery).
11 telltale fittings, for valves, complete.....	Mach. shop (gallery).
394 4 gate valve bodies, partly machined #5-V-7.....	Mach. shop (gallery).
6 gates for same, partly machined.....	Mach. shop (gallery).
6 bonnets for same, partly machined.....	Mach. shop (gallery).
5 stuffing box glands for same, complete.....	Mach. shop (gallery).
2 stems for same, complete.....	Mach. shop (gallery).
2 sluice valve gates, partly machined.....	Mach. shop (gallery).
2 comp. B. H. stuffing boxes, 4", rough.....	Mach. shop (gallery).

Complete except
drilling bolt
holes in flanges.

	Location.
1 comp. stuffing box gland, 13", rough.....	Mach. shop (gallery).
2 gate valve bodies, 8", rough.....	Mach. shop (gallery).
1 gate valve bonnet, 8", partly machined.....	Mach. shop (gallery).
9 cylindrical zinc castings, rough.....	Mach. shop (gallery).
10 comp. B. H. flanges, 3 1/2", complete.....	Old machine shop.
45 comp. flanges, 2 1/2", complete.....	Old machine shop.
4 comp. flanges, 2", complete.....	Old machine shop.
74 comp. flanges, 4", complete.....	Old machine shop.
2 comp. flanges, 3", complete.....	Old machine shop.
6 comp. flanges, 1 1/2", complete.....	Old machine shop.
57 comp. flanges, 3 1/2", complete.....	Old machine shop.
5 comp. flanges, 4 1/2", complete.....	Old machine shop.
12 comp. flanges, 6", complete.....	Old machine shop.
6 comp. flanges, 7", complete.....	Old machine shop.
1 comp. flange, 8", complete.....	Old machine shop.
19 geipel traps, complete.....	On ship.
4 geipel traps, complete.....	Main store-room.
Gate valves, #42-V-7, complete..	{ Except for drill- ing bolt holes in Dock Eng'r. store-room. flanges.
1 gate valve, 95-V-7, complete.....	
	Floating mach. shop.

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GROUP XIV.—LAGGING AND CLOTHING.

2 H. P. cylinder head lagging plates, complete.	{ Except drilling holes for screws.	Machine shop.
2 I. P. cylinder head lagging plates, complete.		Machine shop.
4 I. P. cylinder head lagging plates, complete.		Machine shop.
1 lot lagging plates for cylinder bottoms, to be drilled.		
2 pkgs. Russia iron, cyl. and condenser lagging, 30 x 48".	{ No work done on this material.	Old machine shop (2nd floor).
1 pkg. Russian iron, cyl. and con- denser lagging, 30 x 60".		Old machine shop (2nd floor).
2 pkgs. Russia iron, cyl. and con- denser lagging, 30 x 72".		Old machine shop (2nd floor).
2 pkgs. Russia iron, cyl. and con- denser lagging, 30 x 84".		Old machine shop (2nd floor).

GROUP XV.—FLOORINGS, GRATINGS, &C.

6	grating supports for engine-room, to be fitted in place.	Machine shop.	
	2 rough forgings for gratings, to be drilled and fitted.	Mach. shop (gallery).	
396	25 comp. handrail castings, rough.	Mach. shop (gallery).	
	51 gratings, complete.	Blacksmith shop.	
69	secs. brass pipe 1" for handrail, no work done on this material.	Old machine shop.	
191	polished brass mandrail fittings, 1", ready for use.	Main store-room.	
11	secs. of gratings, complete, in fire-rooms.	On ship.	
12	secs. of gratings, complete, in engine-rooms.	On ship.	
254	steel corrugated floor plates, in racks, to be drilled & fitted.	On yard.	
58	Mason stair treads, steel, to be worked up into ladders.	Main store-room.	
2,504	ft. 5/8" square iron.	This material is on hand for making gratings, ladders, and their supports.	Blacksmith shop racks.
400	ft. 1" round iron.		Blacksmith shop racks.
143	ft. 5/8" round iron.		Blacksmith shop racks.
717	ft. 3/8" x 2-3/4" iron.		Blacksmith shop racks.
441	ft. 1/4" x 4" iron.		Blacksmith shop racks.
50	ft. 3/8" x 3" iron.		Blacksmith shop racks.
50	ft. 3/8" x 1-1/2" iron.		Blacksmith shop racks.
85	ft. 1-1/2" x 2-3/4" iron.		Blacksmith shop racks.

GROUP XVI.—AUXILIARIES.

	Location.
2 main feed pumps in place.....	On ship.
2 aux. feed pumps in place.....	On ship.
2 hot well pumps in place.....	On ship.
2 fire and bilge pumps in place.....	On ship.
2 bilge pumps in place.....	On ship.
2 water service pumps in place.....	On ship.
397 2 aux. condensers in place.....	On ship.
2 air and cir. pumps for same in place.....	On ship.
2 turning engines, complete (main circulating pump engines).....	Machine shop.
2 ratchets for turning gear, complete.....	Machine shop.
2 turning eng. shaft brackets, partly machined.....	Machine shop.
2 worm gears for turning gear, complete.....	Machine shop.
3 supporting plates for same, rough.....	Machine shop.
161 steel forgings, rough, for ash hoist details.....	Mach. shop (gallery).
160 ft. galv. iron rope, 3/8", for ash hoist details.....	Main store-room.
15 ft. coiled chain, 1/2", for ash hoist details.....	Main store-room.
10 ft. coiled chain, 3/8", for ash hoist details.....	Main store-room.
9 ash buckets, complete, except for bales and catches.....	Old foundry.
3 fire-room blowers, 60", purchased complete.....	Main store-room.
2 shaft bilge pumps complete, except fitting in place.....	Mach. shop (gallery).
1 bx. fittings for same, complete.....	Mach. shop (gallery).
2 ash hoist engines, complete, in place.....	On ship.

GROUP XVII.—FITTINGS AND GEAR.

2 feed & filter tanks in place, complete, except minor fittings.....	On ship.
2 hot well tanks in place, complete, except minor fittings.....	On ship.
4 sheets galv. steel 48" x 96" x #10 B. W. G. for 600 gal. O. T.....	Old machine shop.
8 heads flanged for same.....	Old machine shop.
18 comp. screw 1/2" flanges for same.....	Old machine shop.
6 comp. screw 1-1/2" flange for same.....	Old machine shop.
398 6 comp. screw 1/2" flanges long boss for same.....	Old machine shop.
4 copper oil tanks, 10-gal.....	Complete except for cocks. {
4 copper oil tanks, 5-gal.....	
4 copper oil tanks, 3-gal.....	
12 oil dips.....	Old machine shop.
1 bx. 3/8" brass tubing for oil pipes, no work done on this material.....	Old machine shop.
8 comp. oil boxes, rough, for cir. pump. engs.....	Mach. shop (gallery).
4 waste lockers, complete except for locks.....	Old machine shop.
2 tallow tanks, complete.....	Old machine shop.
2 soda tanks, copper, complete except for pipe connections.....	Old machine shop.
6 hand wheels for safety valve easing gear, complete.....	Mach. shop (gallery).
6 screw stems with brass nuts for same, complete.....	Mach. shop (gallery).
6 comp. plates, pawls and bolts for same.....	Complete..... {
6 drum wheels and shafts for same.....	
6 cast iron brackets with brass bushings for same.....	
	Mach. shop (gallery).
	Mach. shop (gallery).
	Mach. shop (gallery).

		Location.
399	2 mercurial vacuum gauges.....	Main store-room.
10	tabor indicators with extra springs in boxes.....	Main store-room.
2	revolution counters, 8 1/2".....	Main store-room.
4	Seth Thomas clocks, 8 1/2" dial.....	Main store-room.
2	dust-proof cases for same.....	Main store-room.
2	fixed air gauges.....	Main store-room.
2	portable air gauges.....	Main store-room.
2	nitrogen filled thermometers.....	Main store-room.
2	standardizing thermometers.....	Main store-room.
5	mercurial thermometers.....	Main store-room.
12	special thermometers with metallic dial.....	Main store-room.
15	steam gauges, 8 1/2" dial.....	Main store-room.
32	steam gauges, 4 1/2" dial.....	Main store-room.
6	steam gauges, 8 1/2" dial, fitted with 3-way cocks for boilers...	Main store-room.
2	main steam separators, complete.....	On wharf on sheer legs.
400	2 feed water heater casings.....	Machine shop.
	4 feed water heater bonnets.....	Machine shop.
	4 feed water heater tube sheets.....	Machine shop.
	6 baffle plates for same.....	Machine shop.
	2 bxs. tubes for same.....	Machine shop.
15	comp. castings, rough, for handling gear.....	Machine shop.
8	comp. brackets, rough, for handling gear.....	Machine shop.
4	cams, small, rough, for handling gear.....	Machine shop.
4	column brackets, for handling gear.....	Machine shop.
1	comp. quadrant, for handling gear.....	Machine shop.
37	levers, for handling gear.....	Machine shop.
7	complete links, steel, for handling and rain gear.....	Machine shop.
8	half complete links, steel, for handling and rain gear.....	Machine shop.
1	brass bushed iron bracket.....	Mach. shop (gallery).
4	quadrants, flat bosses, rough.....	Machine shop.
401	12 small levers, drain gear.....	Machine shop.
	4 small comp. bracket-castings.....	Machine shop.
	1 comp. column quadrant.....	Machine shop.
	1 half comp. column quadrant..	Machine shop.
	2 square brackets, grating shape	Machine shop.
	4 indicator fulcrums for cross-head pins.....	Machine shop.
	2 half circle base columns, small.....	Machine shop.
	2 half circle comp. castings....	Machine shop.
	8 lever handles, steel.....	Machine shop.
	2 comp. counter gear brackets..	Mach. shop (gallery).
48	swing joint castings, rough.....	Mach. shop (gallery).
13	comp. indicator cock bodies, partly machined.....	Mach. shop (gallery).
11	indicator cock plugs, rough castings.....	Mach. shop (gallery).
	1 lot brackets for safety valve easing gear, brass brushed, complete.....	Mach. shop (gallery).

Complete, ready for installation.

Parts ready for assembling except for glands, which are not made.

Partly machined.....

		Location.
1 engine lathe, 24" x 10', in place.		On ship (workshop).
1 engine lathe, 10" x 4', in place.		On ship (workshop).
1 shaper, 15" x 24" stroke, in place.		On ship (workshop).
1 back-geared drill press, 22"....		On ship (workshop).
1 grindstone, in place.....		On ship (workshop).
1 double emery grinder with two emery wheels.		On ship (workshop).
4 bench vises, in place.....		On ship (workshop).
2 bench vises.....		Main store-room.
1 engine for driving tools, in place.		On ship (workshop).
Shafting, hangers, shifters, belting, etc., for driving machinery, complete, in workshop on ship.		
4 socket wrenches, finished.....	Complete.....	Machine shop.
2 crow-foot wrenches.....		Machine shop.
4 open-end wrenches, straight... 2 socket bars for wrenches.		Machine shop.
403 2 thrust shaft nut wrenches		Mach. shop (gallery).
2 coupling bolt nut wrenches.		Mach. shop (gallery).
2 box wrenches for crosshead nuts.		Mach. shop (gallery).
2 main bearing nut wrenches.....		Mach. shop (gallery).
2 L. P. and I. P. valve stem nut wrenches.		Mach. shop (gallery).
2 boxes wrenches for piston rod nuts.		Mach. shop (gallery).
2 connecting rod nut wrenches...		Mach. shop (gallery).
6 steel forgings for wrenches and screw drivers, floor plates and condensers.	Rough.....	Mach. shop (gallery).
1 steel forcing boly extractor		Mach. shop (gallery).
404 2 cast iron mandrells for propeller hubs.		Mach. shop (gallery).
1 cast iron mandrell for crank pin brasses.	Practically complete.	Machine shop.
1 cast iron mandrell for spring bearings.		Machine shop.
1 cast iron mandrell for main bearings.		Machine shop.
1 air pump rod, composition, to be fitted to crosshead.		Machine shop.
7 air pump link brasses.....	Complete.....	Machine shop.
12 air pump brasses and caps.....		Machine shop.
4 main bearing brasses.....	To be bored and faced at ends.	Machine shop.
3 main bearing steel caps.....		Machine shop.
4 brasses for connecting rods....		Machine shop.
2 crosshead slippers.....	Complete.....	Machine shop.
2 steel caps for crossheads.....		Machine shop.
2 complete crossheads brasses, complete.....		Machine shop.
10 thrust shoes, complete, except fitting oil box covers.		Machine shop.
2 connecting rod bolts and nuts, complete.....		Machine shop.
1 H. P. valve stem.....	To be turned at upper ends and threaded.	Machine shop.
405 L. L. P. valve stem.....		Machine shop.
2 I. P. valve stems, complete.....		Machine shop.
2 L. P. valve stems, guide brasses, complete.....		Machine shop.
1 I. P. crosshead link block brass, complete.....		Machine shop.
2 I. P. crosshead gibs, composition, complete.....		Machine shop.
1 connecting rod with brasses for turning engine, complete.		Machine shop.
2 piston rods for turning engine, complete.....		Machine shop.

	Location.
1 valve stem, finished, for same.....	Machine shop.
2 valve stems, rough forged, for turning engine.....	Main store-room.
2 sets air pump link brasses, rough.....	Mach. shop (gallery).
9 coupling bolts, without nuts, complete.....	Mach. shop (gallery).
1 wrench board with wrenches and gears for work- shop on ship, complete.....	Mach. shop (gallery).
16 eccentric rod brasses, complete.....	Mach. shop (gallery).
16 suspension link brasses, complete.....	Mach. shop (gallery).
16 comp. gibs for link blocks, 80 per cent complete.....	Mach. shop (gallery).
1 main feed check valve body, bonnet and gland, partly machined.....	Mach. shop (gallery).
9 boxes containing spare parts for pumps.....	Dock engr. store-room.
1 box metallic packing for main engine.....	Main store-room.
10 finished wrenches, various sizes.....	Main store-room.

SPARE PARTS AND TOOLS FOR BOILERS.

122 tubes, 2" x 8' 11" (furnished by subcontractors, complete, according to specifications).	Main store-room.
50 circulating tubes, 4" x 8' 11".....	Main store-room.
60 fire brick, #7048.....	Main store-room.
406' 10 flame plates, #1616.....	Main store-room.
10 flame plates, #4617.....	Main store-room.
123 grate bars.....	Main store-room.
3 grate bar bearers.....	Main store-room.
2 wrought iron ash pit doors.....	Main store-room.
1 furnace door lining.....	Main store-room.
4 dead plates.....	Main store-room.
4 furnace door jambs.....	Main store-room.
1 furnace door lintel.....	Main store-room.
300 asbestos gaskets for hand hole fittings.....	Main store-room.
6 gland nuts.....	Main store-room.
5 nipples, brass, 4" x 3 1/2" x #6 gauge.....	Main store-room.
2 manhole gaskets.....	Main store-room.
1 impulse tube cleaner.....	Main store-room.
1 nitrite of silver testing apparatus.....	Main store-room.
4 sets fire tools, consisting of 4 slice bars, 4 claws, and 4 hoes.....	Main store-room.
1 wooden dead plate, pattern B-3964.....	Main store-room.
1 wooden fire door jamb, pattern B-4713.....	Main store-room.
1 wooden fire door jamb, pattern B-4713-A.....	Main store-room.
1 wooden fire door jamb, pattern B-4713-B.....	Main store-room.
1 wooden fire door liner, pattern B-4316.....	Main store-room.
1 wooden grate bar, pattern B-4196.....	Main store-room.
407 1 wooden flame plate, pattern B-4616.....	Main store-room.
1 wooden flame plate, pattern B-4617.....	Main store-room.
1 wooden fire door lintel, pattern B-4623.....	Main store-room.
12 safety valve ga'g's for testing boiler.....	Main store-room.
1 surface blow valve, 1".....	Main store-room.
1 bottom blow valve, 1".....	Main store-room.
6 safety valve springs.....	Main store-room.
1 feed stop valve, 2".....	Main store-room.
12 square hand hole fittings, #28 plate, #8 bridge for headers.....	Main store-room.
12 oval hand hole fittings.....	Main store-room.
1 tube expander, 4".....	Main store-room.
24 taper studs, 7/8".....	Main store-room.
1 mica water gauge.....	Main store-room.
2 sets deurance gauges, 3/4", one glass and one mica.....	Main store-room.
2 manhole plate with guards.....	Main store-room.
1 gauge glass, 3/4" x 14 1/2".....	Main store-room.
1 wooden tool box for boiler tools.....	Main store-room.
1 gasket mold for No. 28 plates.....	Main store-room.
2 wrenches for hand hole plate nuts.....	Main store-room.
1 wrench for 5/8" valve.....	Main store-room.
1 wrench for 3/4" valve.....	Main store-room.

	Location.
408 1 wrench for plugs.....	Main storeroom.
1 socket wrench.....	Main storeroom.
2 tube scrapers, 2" spoon.....	Main storeroom.
4 tube scrapers, 2" spoon.....	Main storeroom.
2 tube expanders, 2".....	Main storeroom.
2 rippling chisels.....	Main storeroom.
12 tube plugs, 4", cast iron.....	Main storeroom.
12 tube plugs, 2", cast iron.....	Main storeroom.
24 taper studs, 3/4".....	Main storeroom.
2 taper taps, 7/8".....	Main storeroom.
2 taper taps, 3/4".....	Main storeroom.
1 cast iron oval gasket mould.....	Main storeroom.
2 plug extractors.....	Main storeroom.
1 oyster knife.....	Main storeroom.
1 manhole plate template, sheet iron.....	Main storeroom.
6 brass plugs, 2".....	Main storeroom.
1 brass pipe union, 1", for wire-wound hose for impulse tube cleaner.....	Main storeroom.
1 set rollers for 4" expanders.....	Main storeroom.
1 set rollers for 2" expanders.....	Main storeroom.
2 mandrels for 2" expanders.....	Main storeroom.
40 gaskets, wire mesh, 3 29/32" x 2 3/16".....	Main storeroom.
38 gaskets, wire mesh, 2 17/32" x 2 3/16".....	Main storeroom.
7 gaskets, wire mesh, 6 7/32" x 4 1/4".....	Main storeroom.
409 6 springs for sentinel valves.....	Main storeroom.
1 taper tap for blow valve elbows.....	Main storeroom.
46 name plates for boilers.....	Main storeroom.
9 copper cleaning tubes.....	Main storeroom.
9 lances, bushings, handles, and tees for cleaning tubes.....	Main storeroom.
18 lifting rods, 4' 9".....	Main storeroom.
1 soot hoe and handle.....	Main storeroom.
6 mandrels for 4" expanders, two-jointed, two double jointed, and two single.....	Main storeroom.
1 sec. wire-wound hose, 25' long, one end fitted with hose connection taken from cleaner; other end fitted with one male pipe thread.....	Main storeroom.

GROUP XX.—MISCELLANEOUS MACHINERY, ETC.

2 distillers, in place, complete.....	On ship.	
2 reservoir tanks, for distillers, complete.....	Old machine shop.	
2 evaporators, in place, complete.....	On ship.	
2 evaporator and distiller pumps, in place, complete.....	On ship.	
2 crates, reserv'r tanks for distillers, complete.....	On ship.	
2 dinkle traps for evaporators, complete.....	Main storeroom.	
2 crates, reserv'r tanks for distillers, complete.....	Main storeroom.	
1 lot fittings for dinkle traps, complete.....	On ship (storeroom.)	
2 salinometer pots and fittings, evaporators, complete.....	On ship (storeroom.)	
2 gauge glasses, in box, complete.....	On ship (storeroom.)	
410 2 crown water meters, 1", complete.....	Main storeroom.	
1 one-ton Allen dense-air ice machine and freezing tank.....	Main storeroom.	
1 valve, #306-V-7, ice machine..	Complete except for drilling bolt hole in flange.	{ Main storeroom. Main storeroom. Main storeroom.
1 valve, #304-V-7, ice machine..		
1 valve, #303-V-7, ice machine..		
9 boxes containing parts for ice machine, blowers and engines and evaporators.....		Main storeroom.

MISCELLANEOUS MACHINERY A'D MATERIAL BELONGING TO VARIOUS GROUPS.

	Location.		
56 comp. flanges, 3 1/2", complete.....	Machine shop.		
1 comp. manifold, #44-V-7, complete.....	Machine shop.		
5 secs. copper pipe, #575, 576, 609, 610, 624, bent to shape, some flanges to be brazed.....	Copper shop.		
4 gate valves, #12-V-7.....	} Complete.....	{ On ship.	
2 gate valves, #13-V-7.....			{ On ship.
4 gate valves, #14-V-7.....			
14 gate valves, #14-V-7, complete, except drilling flanges.....		Floating mach. shop.	
1 comp. fitting, #135-F, complete.....		On ship.	
36 case-hardened nuts, 1 1/2".....		Mach. shop (gallery).	
96 case-hardened nuts, 5/8".....		Mach. shop (gallery).	
180 case-hardened nuts, 3/4".....		Mach. shop (gallery).	
411 247 case-hardened nuts, 7/8".....		Mach. shop (gallery).	
307 case-hardened nuts, 1".....		Mach. shop (gallery).	
256 case-hardened nuts, 1 1/8".....		Mach. shop (gallery).	
50 case-hardened nuts, 1 1/4".....		Mach. shop (gallery).	
29 zinc slabs, standard size.....		Mach. shop (gallery).	
1 sheet copper, 48" x 96" x No. 20, B. W. G., in crate.....		Old machine shop.	
12 sheets steel plate, 43" x 120" x 3/16".....		Boiler shop.	
3 sheets steel plate, 48" x 96" x 3/16".....		Boiler shop.	
1 pc. brass strip, 1/2" x 1/8" x 20'.....		Main storeroom.	

4708-03

UNITED STATES OF AMERICA.

S.

Navy Department.

I hereby certify that the annexed are correct copies of the report and its inventories, dated May 21, 1903, of a board of which Rear-Admiral Thomas O. Selfridge, U. S. Navy, retired, was president, appointed by the Secretary of the Navy to make an inventory of and appraise the value of the work and labor done and materials furnished by the William R. Trigg Company under its contract, dated December 14, 1899, for the construction of United States cruiser No. 17, the "Galveston," and the contract, dated December 14, 1899, for the construction of said vessel, on file in this department.

In testimony whereof, I have hereunto set my hand, and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this nineteenth day of June, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States the one hundred and twenty-seventh.

[SEAL.]

WILLIAM H. MOODY,
Secretary.
Sct.

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Exhibit "C."

TREASURY DEPARTMENT.

Office of the Secretary.

WASHINGTON, June 20, 1903.

To the SOLICITOR OF THE TREASURY,

Washington, D. C.

SIR: Under and pursuant to the authority contained in section 3753 of the Revised Statutes of the United States. I, Leslie M. Shaw,

the Secretary of the Treasury of the United States, hereby direct you, the solicitor of the Treasury of the United States, to cause a stipulation in writing to be entered into by the United States attorney for the eastern district of Virginia, for the release and discharge of certain property owned by the United States, and in which the United States have and claim an interest, to-wit: the unfinished protected cruiser No. 17, "Galveston," and all materials on hand applicable thereto, which said property is located in the ship yards of the William R. Trigg Company, in the city of Richmond, Henrico County, Virginia, and which said property is inventoried and described in that certain report, dated May 21, 1903, made to the Secretary of the Navy, by a board of appraisal, all of which said property is seized, arrested, and held in a judicial proceeding under the laws of the State of Virginia, to-wit: that certain cause now pending in the Court of Chancery of the city of Richmond, Virginia, entitled S. H. Hawes & Company v. William R. Trigg Company et al., as and for the security and satisfaction of certain alleged liens, claims, and demands heretofore made against such property in said cause.

Respectfully,

L. M. SHAW,
Secretary of the Treasury.

Exhibit "D."

TREASURY DEPARTMENT.

Office of the Solicitor of the Treasury.

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WASHINGTON, June 20, 1903.

L. L. LEWIS, Esq.,

*United States Attorney for the Eastern District of Va.,
Richmond, Va.*

SIR: I am directed by the honorable Secretary of the Treasury of the United States, Leslie M. Shaw, in his letter to me, dated June 20, 1903, to cause a stipulation in writing to be entered into by the United States attorney for the eastern district of Virginia, for the release and discharge of certain property owned by the United States, and in which the United States have and claim an interest, to-wit: the unfinished protected cruiser No. 17, "Galveston," and all material on hand applicable thereto, which said property is located in the ship yards of the William R. Trigg Company in the city of Richmond, Virginia, and which said property is inventoried and described in that certain report dated May 21, 1903, made to the Secretary of the Navy by a board of appraisal, all of which said property is seized, arrested, and held in a judicial proceeding under the laws of the State of Virginia, entitled, S. H. Hawes & Company v. William R. Trigg Company et al., as and for the security and satisfaction of certain alleged liens, claims, and demands, heretofore made against such property in said cause.

In accordance with said directions and instructions to me contained in said letter, you, L. L. Lewis, United States attorney for the eastern district of Virginia, are hereby required and directed to make, enter into, and file a stipulation and undertaking in writing in the office of the clerk of the Chancery Court of the city of Richmond, Virginia, in said cause for the release and discharge of said property in conformity with sections 3753 and 3754 of the Revised Statutes of the United States.

Respectfully,

F. A. REEVE,
Acting Solicitor of the Treasury.

Stipulation for discharge of the "Mohawk,"

Filed in court under decree of June 30th, 1903.

In the Chancery Court of the city of Richmond.

414 S. H. HAWES & COMPANY }
v. }
WM. R. TRIGG COMPANY ET AL. }

STIPULATION FOR THE DISCHARGE OF CERTAIN PROPERTY OF THE
UNITED STATES.

Whereas, by an act of Congress, approved March 3, 1899, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1900, and for other purposes," it was provided, for the purpose of increasing the number of vessels for the Revenue Cutter Service of the United States, that the Secretary of the Treasury should direct the construction of certain revenue cutters, among others, one of the first class, for service on the Pacific coast, at a cost not to exceed \$225,000 (30 Stats., page 1081). And,

Whereas, thereafter, to-wit, on the 20th day of April, 1900, under and pursuant to said act of Congress, a contract in writing was duly made and entered into by and between the William R. Trigg Company, a corporation created under the laws of the State of Virginia, and doing business at the city of Richmond, in said State, party of the first part, and the United States of America, by the Secretary of the Treasury, party of the second part; for the building and construction of a revenue cutter designated and described as "No. 8, R. C. S.," now known and designated as the "Mohawk," at a cost of \$217,000, a copy of which said contract is herewith attached and marked "Exhibit A," and herewith made a part of this stipulation. And,

Whereas, thereafter, and under and pursuant to the terms and conditions of said contract the said William R. Trigg Company entered upon the work of building and constructing the said revenue cutter "Mohawk" in the ship-yard of said company at Richmond, Virginia, and, from time to time, as the work on said revenue cutter

progressed the said company received payments of large sums of money from the United States in accordance with the provisions of said contract, amounting in the aggregate to \$149,437. And,

Whereas, it is expressly provided in said contract that a lien shall be reserved to the United States upon the hull, machinery, fittings and equipment of said vessel, and the materials on hand for
415 use in her construction, respectively and collectively, for all moneys advanced on account thereof, and that such lien shall commence with the first payment, and thereupon attach to the work done and materials furnished, and shall in like manner attach from time to time as the work progresses, and as further payments are made, and shall continue until the completion and acceptance of said vessel. And,

Whereas, thereafter, to wit, on the 23rd day of December, 1902, the Chancery Court of the city of Richmond, Virginia, appointed one Lilburn T. Myers as receiver of said William R. Trigg Company, who thereupon took possession of all the real and personal property belonging to said William R. Trigg Company, and who has since that date been acting as the receiver of said company under and pursuant to said appointment. And,

Whereas, ever since the appointment of said receiver of the said William R. Trigg Company the said company and the said receiver have failed and neglected to go forward with the work and make progress toward the completion of the said revenue cutter, as required by the terms and conditions of said contract, though often requested by the United States to do so. And,

Whereas, it is expressly understood and agreed between the parties to the said contract, that in case of the neglect or failure of the said party of the first part to fulfill the stipulations of its undertaking, then the Secretary of the Treasury is authorized to direct the purchase of all necessary materials, and cause the construction of the vessel to be completed as specified and required by the contract, and that the said party of the first part shall be liable to the United States in such event for any excess of the cost of the construction of the vessel over the price hereinafter named and stipulated to be paid therefor to the said party of the first part; and in case of delay beyond the date mentioned for the completion and delivery of the vessel there shall be deducted thirty dollars a day from the contract price, in the discretion of the Secretary of the Treasury, for each and every day that the completion and delivery may be delayed beyond the time specified in said contract. And,

Whereas, the United States now claims and asserts title to said vessel in its present incomplete and unfinished condition, and title to all the materials on hand necessary for its completion, and asserts the right under the terms of the contract to proceed and complete the vessel, according to said provision. And,

416 Whereas, certain creditors of said William R. Trigg Company have made and filed their claims and demands against said company and its said receiver, in the office of the clerk of the

Chancery Court of the city of Richmond, Virginia, for work and material furnished for said revenue cutter. And,

Whereas, the United States is desirous of protecting any and all of said creditors in any claims, demands, or liens which they or any of them may have in and to said property or any part thereof, provided it shall be ultimately determined that such creditors, or any of them, hold any liens, claims, or demands against said property which are prior to and superior to the rights of the United States in and to the same. And,

Whereas, the Secretary of the Treasury of the United States, on the 23d of June, 1903, under and pursuant to the authority contained in section 3753 of the Revised Statutes of the United States, directed the Solicitor of the Treasury of the United States to cause a stipulation to be entered into by the United States attorney for the Eastern District of Virginia, for the release and discharge of the property hereinbefore described, owned by the United States, and in which the United States has and claims an interest, and which said property was then and there, and now is, located in the Eastern District of Virginia, to wit, in the city of Richmond, Henrico County, Virginia. All of which more fully appears in the original letter of the Secretary of the Treasury of the United States to the Solicitor of the Treasury, hereto annexed, marked "Exhibit B," and hereby made a part of this stipulation. And,

Whereas, the Solicitor of the Treasury of the United States, acting under instructions contained in said letter (Exhibit B) from the Secretary of the Treasury, dated on the 23d day of June, 1903, required and directed the United States attorney for the Eastern District of Virginia, to wit, L. L. Lewis, to make, enter into, and file a stipulation and understanding in writing, in the office of the clerk of the Chancery Court of the city of Richmond, Virginia, in accordance with the provisions contained in sections 3753 and 3754 of the Revised Statutes of the United States, for the release and discharge of the property hereinbefore described, owned by the United States, and in which the United States has and claims an interest, free from all claims and demands of every nature and description, whether
 417 arising by virtue of said receiver, or otherwise; and all of which more fully appears in the original letter from the Solicitor of the Treasury to the said United States attorney, hereto annexed, marked "Exhibit C," and hereby made a part of this stipulation; and,

Whereas said Chancery Court of the city of Richmond, said Lilburn T. Myers, the receiver of the William R. Trigg Company, of Richmond, Virginia, and diverse creditors of said company, have seized, and are now holding, arresting, and claiming said property, to wit, the unfinished revenue cutter "Mohawk" and certain materials on hand applicable to the completion of the same, as and for security and satisfaction of certain alleged liens, claims, and demands made against such property in a judicial proceeding, to wit, the above-entitled cause, heretofore instituted in the Chancery Court of said city

of Richmond, under and by virtue of the laws of the State of Virginia.

Now, therefore, the United States attorney for the Eastern District of Virginia, L. L. Lewis, being hereunto especially authorized by the Secretary of the Treasury and the Solicitor of the Treasury, hereby makes and enters into this stipulation and undertaking for and in behalf of the United States, and files the same in the Chancery Court in and for the city of Richmond in the State of Virginia, and in the above-entitled cause, for the relief and discharge of the said unfinished revenue cutter "Mohawk" and the materials on hand applicable to the completion of the same; all of said property being claimed as owned by the United States, and in which the United States have and claim an interest; and the condition of this stipulation and undertaking is that if a final judgment is hereinafter given and awarded in the court of last resort to which the Secretary of the Treasury may deem it proper to cause such proceedings, by which said property is at present held, to be carried, affirming the claim or claims for security or satisfaction, for which such proceedings have been instituted, and the right of any person or persons, firms, or corporations asserting the same to enforce against said property by means of such proceedings, notwithstanding the claims of the United States thereto, such final judgment shall be deemed to all intents and purposes as a full and final determination of the rights of such person or persons, firms, or corporations, and shall entitle such person

or persons, firms, or corporations as against the United States to such rights as he or they would have had in case the possession of such property had not been changed, and if such claim or claims is or are for the payment of money, and the same shall be by such judgment found to be due, the presentation of a duly authenticated copy of the record of such judgment and proceedings shall be sufficient evidence to the proper accounting officers of the United States for the allowance thereof, and the same shall thereupon be allowed and paid out of any moneys in the Treasury of the United States not otherwise appropriated. Provided, that the amount to be so allowed and paid shall not exceed the value of the interest of the United States in and to the property in question at the time when such property is released and discharged under and by virtue of the making and filing of this stipulation and undertaking.

Nothing in this stipulation contained shall be considered or construed as recognizing or conceding any right to any person or persons, firms, or corporations, to enforce by seizure, arrest, attachment, or any judicial process whatsoever, any claim or claims against any property of the United States, or against any property held, owned, or employed by the United States, or by any department thereof, for any public use, or as waiving in any manner whatsoever any objection to any proceeding instituted by any person or persons, firms or corporations to enforce any such claim or claims.

And it is further hereby expressly declared that nothing in the above stipulation contained shall be construed or considered as in any

manner affecting or releasing any existing claim or claims, or any claim or claims which may hereafter accrue in favor of the United States as against said William R. Trigg Company and its surety, The Virginia Trust Company, or as affecting or releasing any claim or claims existing, or hereafter accruing, in favor of the United States against the receiver of said company, or any property of the said William R. Trigg Company now held by such receiver; and it is further declared that the above stipulation and undertaking is entered into by the authority and under the direction of the Secretary of the Treasury under and pursuant to the provisions of sections 3753 and 3754 of the Revised Statutes of the United States; the sole and express purpose in making the same being to secure the immediate release and discharge of said unfinished revenue cutter and the materials on hand applicable to her completion, and at the same

419 time to secure to any and all claimants, who may now have an interest in or to the property so discharged, released, and surrendered into the possession of the United States, the fullest possible protection and security in and to their respective rights and claims, if any shall hereafter be determined to exist as contemplated by the sections of the Revised Statutes above referred to, and to preserve intact and unaffected for such claimants all the rights and remedies which they would have had in case said property had not been taken, but no other or additional rights are intended to be given or conceded.

A list of the materials on hand applicable to the completion of the said vessel is herewith filed as a part of this stipulation, marked "Exhibit D."

This 30th day of June, A. D. 1903.

L. L. LEWIS,

United States Attorney for the Eastern District of Virginia, being hereunto expressly authorized and required to sign this stipulation by the Secretary of the Treasury and the Solicitor of the Treasury of the United States.

"Exhibit A" referred to in stipulation for discharge of the "Mohawk," filed in court under decree of June 30th, 1903.

United States Revenue-Cutter Service. Proposal and contract for the construction of a steel steam propeller to be known as "No. 8, R. C. S." for service on the Pacific coast.

INSTRUCTIONS TO BIDDERS.

Bids which do not comply with the following directions will
420 not be considered unless the Secretary of the Treasury shall deem it for the interest of the Government to waive the defect:

1. All bids must conform to the terms in the published advertisement.

2. Proposals will be considered from such shipbuilders only as can show to the satisfaction of the Secretary of the Treasury that they are possessed of the necessary plant and facilities for the performance of the work.

3. Each bidder must fill in all the blanks in the form of proposal as printed herein.

4. Where the bid is made by a firm, the individual names of the members must be written out in the bid, and the name and style of the firm must also be stated, as thus: "We, John Smith, William Jones, and Robert Brown, doing business in the city of San Francisco, under the firm name and style of Smith & Co.," and the bid must be signed by each individual member of the firm, giving the Christian name in full, and his place of residence.

5. Where the bid is by an incorporated company, its name, style, and authority in law must be given in the body, as thus: "I, John Doe, president, for and on behalf of the Pacific Shipbuilding Company, of San Francisco, California, a corporation created by special act of the legislature of the State of California," and the bid must be signed by the proper officer and be attested by the corporate seal of the company.

6. Bids must state the time required to deliver the vessel, or the work bid for, completed.

7. Bidders will, in their proposals, if shipbuilders, name the party or parties by whom the engine, boiler, etc., are to be built; and, if engine builders, they will name the shipbuilders who are to construct the hull, etc.

8. The successful bidder will be required to furnish a satisfactory bond, in a sum equal to one-half the contract price of the work, for the faithful performance of the contract.

9. Each proposal must be accompanied with a certified check in the sum of four thousand dollars (\$4,000), payable to the order of the Secretary of the Treasury. The check of the successful bidder will be retained until the execution of the formal bond and contract, and the approval of the same by the Secretary of the Treasury, and the checks of the unsuccessful bidders will be returned immediately
421 after the proposal of the successful bidder shall have been accepted.

10. When the form of proposal has been properly filled up, this pamphlet must be returned un mutilated, in a sealed envelope, addressed to the "Secretary of the Treasury," and indorsed "Proposal for revenue steamer for Pacific coast."

Proposal for the building of a steel steam propeller, to be known while in course of construction or until launched as "No. 8, R. C. S.," for the United States Revenue-Cutter Service.

Dated at _____,
_____, 1900.

To the SECRETARY OF THE TREASURY,
Washington, D. C.

Having carefully examined the form of contract and the specifications furnished by the Secretary of the Treasury, and the plans for the building of a steel steam propeller, to be known while in

course of construction or until launched as "No. 8, R. C. S.," for the United States Revenue-Cutter Service, doing business under the firm name and style of (a), will contract to construct the hull and steam machinery of said steel steam propeller and deliver the vessel complete in all respects, according to the terms thereof, at the port of , on or before the day of , 19 , for the sum of (b) dollars (\$), and do hereby agree to enter into such bonds for the faithful performance of the proposed contract as may be required.

It is further agreed and understood that before or immediately after awarding the contract for the work the department shall be furnished by the undersigned with full and complete calculations in detail of the weights of every part of the hull, boilers, machinery, and fixtures of the vessel when complete in all respects according to the specifications furnished, and the plans, including the quantity of water in the boilers, auxiliaries, and in the tanks when
422 filled, and of the displacement and trim of the vessel according to said weights, specifications, and plans (boilers, auxiliaries, and tanks filled with water), and with armament, men and their baggage, provisions, outfits, and boats (estimated at twenty (20) tons) on board, but not affecting the trim, and 75 tons of coal evenly distributed in the bunkers, and will, in the event of finding that the vessel as at present designed will draw more or less water than 11 feet mean draft with said boilers, auxiliaries, and tanks filled with water, and with said armament, boats, coal, men and their baggage, provisions, and outfits on board, furnish the department with a statement showing what modifications of said plans will be necessary to produce said draft, viz. 11 feet mean draft, and will agree to make the same without additional cost.

The is to be built by

Residing at

Residing at

Residing at

Place of business .

(a) Bidders will be required, if requested, to furnish the department with a statement showing their experience in building steel steamships and their capacity and facilities for doing the work proposed.

(b) Prices must be written as well as expressed in figures.

William R. Trigg Company, home office, Richmond, Va.

423 I, William C. Preston, secretary of the William R. Trigg Company, do hereby certify that the following are the officers and directors of said company, elected at the annual meeting of

the stockholders of said company, held at the home office of the company, in the city of Richmond, Va., on the 16th day of October, 1899:

William R. Trigg, president; L. T. Myers, vice-president; William C. Preston, secretary.

Directors, William R. Trigg, L. T. Myers, William C. Preston, J. J. Montague, Robert S. Bosher, Thomas Atkinson.

And at the regular weekly meeting of the board of directors, held at the office of the company on the 17th day of April, 1900, at which a quorum was present, the president or vice-president was authorized to execute on behalf of the company the contracts and bonds for the construction of revenue cutters Nos. 7 and 8, and the secretary was directed to affix thereto the corporate seal of the company.

Given under my hand and seal this 3rd day of May, 1900.

[SEAL.]

(Sgd.)

WM. C. PRESTON,

Secretary.

Contract for the building of a steel steam propeller, to be known while in course of construction or until launched as "No. 8, R. C. S.," for the United States Revenue-Cutter Service.

This agreement, made and concluded this 20th day of April, in the year one thousand nine hundred (1900), by and between William R. Trigg Company, a corporation organized under the laws of the State of Virginia, by its president, Wm. R. Trigg, of Richmond, in the State of Virginia, of the first part, and L. J. Gage, Secretary of the

Treasury, acting for and in behalf of the United States of
424 America, of the second part, witnesseth: That the said party

of the first part, for the consideration hereinafter mentioned and contained, does covenant and agree with the party of the second part, that it will, on or before the twentieth day of December, 1901, construct a steel steam propeller for service on the Pacific coast, to be known while in course of construction or until launched as "No. 8, R. C. S.," for the United States Revenue-Cutter Service, and deliver said vessel afloat and complete in all respects and ready for service to the party of the second part, or his authorized agent or attorney, at the port of Richmond, and according to the specifications and the plans furnished by the department, which form a part of this contract; to be subject to the inspection and approval of superintendents appointed by the Secretary of the Treasury, with full power to reject or approve any materials or articles used in said construction and at any stage of the work before final approval, as hereinafter provided; and it is further agreed that full access to the work and full facilities for the inspection of the same shall at all times be afforded to the person or persons selected by the Secretary of the Treasury. The said party of the first part shall furnish fuel for satisfactory trials of the machinery, and also for the final trial trip. And it is further understood and agreed between the parties hereto that in case of the neglect or failure of the said party of the first part to fulfill the stipulations of its part of this contract, then the Secretary of the Treasury is authorized to direct purchases to be made of all the

necessary materials, and cause the construction of the vessel to be completed as herein specified and required, and the said party of the first part shall be liable to the said United States, in such event, for any excess of the cost of the construction of the vessel over the price hereinafter named and stipulated to be paid therefor to said party of the first part; and in case of delay beyond the date hereinbefore mentioned for the completion and delivery of the vessel, there shall be deducted thirty (30) dollars per day from the contract price, in the discretion of the Secretary of the Treasury, for each and every day that the completion and delivery may be delayed beyond the time specified in this contract, and the said party of the first part agrees to accept and receive said contract price, less said sum of thirty (30) dollars per day for each and every day of delay, as above set forth, in full payment for the construction of said vessel.

425 And the said party of the first part does engage and contract that no Member of Congress, or any person holding any office or appointment under the Government of the United States, shall have any interest, or be in anywise concerned, in any of the profits or receipts of this contract.

And the said party of the first part does further engage and contract to keep the hull, machinery, fittings, and equipments of the vessel herein contracted for, and all materials and appliances provided for and used, or to be used, in the construction thereof, duly insured, which insurance shall be renewed and increased from time to time by it, the loss, if any, to be stated in the policies as payable to the United States; the insurance to be effected in such manner and in such companies as shall be approved by the Secretary of the Treasury, and in an amount to be fixed from time to time by him, not exceeding the amount of advance payments made under this contract.

And it is hereby guaranteed by the party of the first part that the United States shall not be charged for, or rendered liable for, any costs or expenses for the use of any patented article in the construction of said vessel, engine, auxiliaries, and boilers, or required or furnished under this contract.

And the United States, by L. J. Gage, Secretary of the Treasury, for and in consideration of the foregoing, and the covenants, stipulations, and agreements hereinafter contained, to be done and performed by the said party of the first part, have covenanted and agreed, and by these presents do covenant and agree to and with the said party of the first part, that there shall be paid to the said party of the first part, from the Treasury of the United States, in lawful money of the United States, for the said vessel, when the same shall have been fully completed, and finished and delivered as specified, and shall have been inspected by the properly authorized inspecting officers for the Government, and pronounced satisfactory in all respects, and the trial trip successfully made, the sum of two hundred and seventeen thousand dollars (\$217,000.00): Provided, That the Secretary of the Treasury may, in his discretion, make partial payments under this contract during the progress of the work, not to exceed seventy-

five (75) per cent of the value of the labor and materials actually furnished and delivered (and not paid for) at the date of any such payment: Provided, That a lien shall be, and hereby is, reserved to the United States upon the hull, machinery, fittings, and equipment of said vessel, and the materials on hand for use in her construction, respectively and collectively, for all moneys advanced on account thereof, and that such lien shall commence with the first payment, and shall thereupon attach to the work and the materials furnished, and shall in like manner attach, from time to time, as the work progresses, and as further payments are made, and shall continue until the completion and acceptance of said vessel.

And it is further stipulated by and agreed between the parties hereto, that no expense extra of the contract shall be incurred, nor shall the United States be held liable for any extra work beyond that stipulated in this contract and the plans and specifications constituting a part thereof unless the same shall have been first authorized in writing by the Secretary of the Treasury: Provided, also, That no payment shall be made under this contract until after presentation of accounts for the amounts due in proper form, and due examination of the same by the proper accounting officer of the Treasury Department. And for the true and faithful performance of all and singular the covenants, articles, and agreements hereinbefore particularly set forth, the party of the first part hereunto binds itself and each of its successors, assigns, and legal representatives jointly and severally, and the party of the second part binds himself and his successors in office, firmly by these presents.

In testimony whereof, and of the agreement and stipulations herein described, the said part—of the first part has hereunto signed its corporate name, and affixed its corporate seal, and the said party of the second part has set his hand and affixed the seal of his office as of the day and year above written.

[SEAL.]

WILLIAM R. TRIGG COMPANY,
By WM. R. TRIGG, *President*.

Attest:

WM C. PRESTON, *Sec'y*.

[Seal of the Treasury Department.]

L. J. GAGE,
Secretary of the Treasury, H. S. M.

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BOND.

Know all men by these presents, that we, William R. Trigg Company, of Richmond, Virginia, as principal, and Virginia Trust Company, of Richmond, Virginia, as surety, are held and firmly bound unto the United States of America in the full and just sum of forty five thousand dollars (\$45,000.00) lawful money of the United States, to be paid to the said United States, or to its proper agent or attorney duly authorized to receive the same, as liquidated damages; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our successors, heirs, executors,

and administrators, in the whole and for the whole, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twentieth day of April, anno Domini one thousand nine hundred (1900).

The condition of this obligation is such that if said William R. Trigg Company, its successors, assigns, and legal representatives do, and shall well and truly perform the stipulations of the contract hereto annexed, which it has entered into with L. J. Gage, Secretary of the Treasury, for and in behalf of the United States, by which it agrees to construct and deliver a steel steam propeller for the United States Revenue-Cutter Service, conforming in all respects to said contract and the specifications and plans forming a part thereof, and shall promptly make payments to all persons supplying said contractors labor and materials in the prosecution of the work provided for in said contract, then the foregoing obligation to be void and of no effect; otherwise to remain in full force and virtue in law.

[SEAL.] WILLIAM R. TRIGG COMPANY, [L. S.]
By WM. R. TRIGG, *President*.

Attest:

WM. C. PRESTON, *Secty.*

[SEAL.] VIRGINIA TRUST COMPANY, [L. S.]
By JAMES N. BOYD, *President*.
JOHN MORTON, *Secretary*.

BONDSMEN'S OATHS.

STATE OF _____, County of _____, ss:

428 Before me, _____, in and for the county and State above named, personally appeared _____, by occupation a _____, by occupation a _____, and by occupation a _____, the persons named in and who executed the foregoing bond, and each for himself made oath in solemn form that he is worth the sum of _____ dollars (\$ _____) over and above his legal liabilities; and the said _____ for himself, made oath that his property consists of _____ lying in the count of _____ and the said _____, for himself, made oath that his property consists of _____ lying in the count of _____ and State of _____ and the said _____, for himself, made oath that his property consists of _____ lying in the count of _____ and State of _____

Sworn to and subscribed before me this _____ day of _____, A. D. 190 _____.

NOTE.—The foregoing affidavit must be made before the clerk of a court of record having a seal.

Office of _____,
District of _____,
190 _____.

I hereby certify that _____ and _____, the persons named in and who executed the foregoing bond, are to me _____ well known; that

they are residents of _____, and are, in my opinion, good and sufficient sureties for the purposes mentioned in said bond.

*"Exhibit B," filed with stipulation for discharge of revenue cutter
"Mohawk," filed in court under decree of June 30, 1903.*

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TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, June 23, 1903.

TO THE SOLICITOR OF THE TREASURY:

SIR: Under and pursuant to the authority contained in section 3753 of the Revised Statutes of the United States, I, Leslie M. Shaw, Secretary of the Treasury of the United States, hereby direct you, the Solicitor of the Treasury of the United States, to cause a stipulation in writing to be entered into by the United States attorney for the eastern district of Virginia for the release and discharge of certain property owned by the United States and in which the United States have and claim an interest, to wit, the unfinished steam steel propeller No. 8, designated as the "Mohawk," for the Revenue Cutter Service, and all materials on hand applicable to the construction thereof, which said property is located in the shipyards of the William R. Trigg Company, in the city of Richmond, Henrico County, Virginia; all of which said property is held in a judicial proceeding under the laws of the said State of Virginia for the satisfaction of certain alleged liens, claims, and demands heretofore made and now pending against said vessel and material, to wit, that certain cause now pending in the court of chancery for the city of Richmond, Virginia, entitled S. H. Hawes & Company v. William R. Trigg Company et al.

Respectfully,

L. M. SHAW,
Secretary of the Treasury.

*"Exhibit C," filed with stipulation for discharge of revenue cutter
"Mohawk," filed in court under decree of June 30, 1903.*

Dictated by
F. A. R. 4034.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., June 23, 1903.

430 HON. L. L. LEWIS.

U. S. Atty. E. Dist. Va.,
Richmond, Virginia.

SIR: I am directed by the honorable Secretary of the Treasury of the United States, Leslie M. Shaw, in his letter to me dated June 23, 1903, to cause a stipulation in writing to be entered into by the United States attorney for the Eastern District of Virginia for the release and discharge of certain property owned by the United States and in which the United States have and claim an interest, to wit: The unfinished steam steel propeller No. 8, known as the "Mohawk," for

the Revenue-Cutter Service, and all material on hand applicable to the construction and completion of the same; which said property is located in the shipyards of the William R. Trigg Company, in the city of Richmond; all of which said property is held in a judicial proceeding under the laws of the State of Virginia, entitled S. H. Hawes & Company vs. William R. Trigg Company et al., as and for security and satisfaction of certain alleged liens, claims, and demands heretofore made and now pending against said vessel and material.

In accordance with said directions and instructions to me, contained in said letter, you, L. L. Lewis, United States attorney for the Eastern District of Virginia, are hereby required and directed to make, enter into, and file a stipulation and undertaking in writing in the office of the clerk of the chancery court of the city of Richmond, Virginia, in said cause, for the release and discharge of said property, in conformity with sections 3753 and 3754 of the Revised Statutes.

Very respectfully,

F. A. REEVE,
Acting Solicitor.

*"Exhibit D," filed with stipulation for discharge of revenue cutter
"Mohawk," filed in court under decree June 30, 1903.*

INVENTORY OF MATERIALS ON HAND AND APPLICABLE TO THE COMPLETION
OF THE REVENUE CUTTER "MOHAWK," AND THE LOCATION OF SAME AT
THE WORKS OF THE WM. R. TRIGG CO.

Boiler shop:

431 8 bearing bars for furnaces.

Copper shop:

- 1 ball trap for wash basin.
- 3 drain pipes for wash basins.
- 4 air cock pipes for boilers.
- 4 Drip pans for boiler gauge cocks.
- 4 drip pans drain pipes for gauge cocks.
- 1 whistle pipe cover in sections.
- 1,620 lbs. gal. iron boiler lagging.

Brass bands for auxiliary machinery:

- 3 copper steam table dishes and covers.
- 4" angle valves 108-V-11.
- 1 1-1/4" angle valves (rad. valve).
- 1 1-1/4" angle valves 227-V-11.
- 1 3/4" globe valves 245-V-11.

Chief engineer's storeroom, all spare parts for auxiliary machinery:

- 4 salinometers (brass)
- 4 thermometers.
- 1 propeller wrench.

Storerooms:

- 1 folding lavatory.
- 450 ft. 2-1/2" hose.
- 50 ft. 1-1/2" hose.
- 25 ft. 1" hose.
- 4 - 2-1/2" nozzles.
- 1 - 1-1/2" nozzles.
- 1 - 1" nozzle.
- 4 pairs 2-1/2" spanners.
- 1 test steam gauge.
- 7 copper baskets for Macomb strainers.
- 6 main bearing brasses.
- 3 sets crank pin brasses.
- 3 sets crosshead brasses.
- 1 set valve gear brasses.
- 432 50 condenser tubes.
- 100 condenser tubes glands.
- 1 shaft for workshop.
- 6 pulleys for workshop.
- 1 tap for boiler stay tubes.
- 14 evaporator coils.
- 3 sets metallic packing for pistons.
- 3 sets metallic packing for valve stems.
- 1 set metallic packing for reverse engine.
- 18 bulkhead lamps.
- 6 hurricane lamps.
- 6 hand lanterns.
- 1 steam tube cleaner & hose.
- 1 flexible tube with mouth piece.
- 1 150-gal. tank & valve.
- 8 copper slop jars.
- 8 brackets for slop jars.
- 6-gal. iron slop jars.
- 12 radiator covers.
- 7 water-closet seats.

Outfitters storeroom:

- 4 brackets for hose reels.

Finishing shop:

- 1 vise bench.
- 1 chest of drawers.
- 1 wrench board.
- 2 hose reels.
- Lagging for main engine.

Drawing room:

- Tracing & blueprints.

Machine shop:

- Black walnut strips for lagging auxiliary machinery.
- Lagging for main engine.
- 1/2 set follower bolts & nuts.

Machine shop—Continued.

- 1/2 set springs for pistons.
- Zinc rings for holes in bottom of ship.
- 433 Brass screws for zinc.
- 3 trolleys for coal railway.
- 2 wrench racks.
- 29 wrenches.
- 1 spanner for stern tube nut.
- 6 coupling bolts.
- 1 pinch bar.
- 1 umbrella for escape pipe.
- 6 tube stoppers.
- 2 eye bolts (off set) for crank pin bolts.
- 4 ball traps for wash basins.
- 1 hydraulic jack.
- 1 copper pipe for ward-room water-closet.
- Jack bolts for cyl. & steam chest covers.
- 6 main journal gauges.
- Trams for cranks and valve stems.
- 1 crosshead bar.
- 2 spring bearing oil cups.
- 9 lock cocks & keys.

Pattern shop:

- Pattern for grate bars.
- Pattern for door frames.
- Pattern for bridge walls.
- Pattern for dead plate.
- 5 pieces lagging for main engine.

Hull; inventory of articles and materials on hand at the Trigg Company's works, applicable to the completion of the U. S. S. "Mohawk:"

- 5 sails.
- 4 awnings.
- 3 skylights.
- 12 skylight lifting gear.
- 12 boat davits.
- 12 boat davit sockets.
- 2 booby hatches, mahogany.
- 3 skylight screens, brass wire.
- 2 anchor davits.
- 11 doors to quarters.
- 5 doors to closets.
- 12 mess chest tops.
- 434 12 mess chest locker tops.
- 60 awning stanchions.
- 60 awning stanchion sockets and heads.
- 2 swinging booms.
- 90 air port screens.
- 36 air port chutes.

Hull, etc.—Continued.

- 2 ash chutes.
- 1 ash hopper.
- 16 belaying pins, brass.
- 2 leadsman gratings.
- 14 towel racks, nickel plated.
- 14 towel racks, quartered oak.
- 16 mirrors, French plate.
- 172 yds. Cork carpet.
- 14 stateroom lamps, nickel plated.
- 1 chronometer box.
- 1 watch bell.
- 2 ash ladders for holds.
- 140 fathoms 2'' manila rope, for running rigging, 112 lbs.
- 225 fathoms 2-3/4'' manila rope, for running rigging, 307 lbs.
- 40 fathoms 3-1/4'' manila rope, for running rigging, 82 lbs.
- 170 fathoms 3'' manila rope, for running rigging, 294 lbs.
- 18 fathoms 2-1/4'' manila rope, for running rigging, 22 lbs.
- 100 fathoms 1-1/2'' manila rope, for running rigging, 55 lbs.
- 83 fathoms 1-3/4'' manila rope, for running rigging, 61 lbs.
- 170 fathoms 2-1/2'' manila rope, for running rigging, 225 lbs.
- 80 fathoms 3-1/2'' manila rope, for running rigging, 160 lbs.
- 33 fathoms 2-1/4'' manila rope, for running rigging, 36 lbs.
- 40 5/8'' galvanized iron thimbles, fitting for rigging.
- 56 5/8'' galvanized iron sister hooks, fittings for rigging.
- 12 3/4'' galvanized thimbles, fittings for rigging.
- 217 lbs. 5/8'' galvanized iron wire rope (standing), for rigging.
- 8 lbs. 7/8'' galvanized iron thimbles, egg shaped.
- 369 lbs. 1-1/2'' galvanized iron rope, for awning ridge ropes.
- 1 set cooking utensils, for galley.
- 435 6 strong backs for boats.
- 12 cleats for boat davits.
- 10 crutches for boat davits, composition.
- 10 thumb cleats, composition, for boat davits.
- 6 spans for boat davits.
- 12 guys for boat davits.
- 2 anchor davit fittings.
- 4 boat cradles.
- 16 foundation bolts, nuts, and washers for guns.
- 150 fathoms signal halyards, braided Italian hemp.
- 2 flag staffs.

Hull, etc.—Continued.

- 5 jacob ladders.
- 3 guard rail stanchions.
- 2 side ladders and fittings complete.
- 2 mast travellers for halyards.
- 12 hatch lifts, composition.
- 14 lewis bolts, sockets, and keys.
- 1 cargo davit, forecastle hatch.
- 1 table for forward officers quarters.
- 1 wheel box cover, mahogany.
- 10 capstan bars.
- 1 anchor bar.
- 1 hinged front to chart locker.
- 4 tarpaulins.
- 1 yale padlock for prison.
- x keys for all doors and furniture.
- 3 screen doors.
- 1 turning gear and cowl to galley ventilator.
- 36 ring bolts.

Depositions in respect to cruiser "Galveston," returned with Commissioner Eugene C. Massie's report No. 4, filed in the clerk's office under date of July 19th, 1906.

S. H. HAWES & Co., PLAINTIFFS,

v.

WM. R. TRIGG CO. ET ALS., DEFENDANTS. }

OFFICE OF WILLIAM R. TRIGG COMPANY,
Richmond, Va., May 12, 1904.

436 Met pursuant to adjournment.

Present: L. L. Lewis, United States district attorney; E. R. Williams, of Munford, Hunton, Williams & Anderson, counsel for the Commercial Trust Company, trustee, and others; Wm. C. Stuart, of Bickford & Stuart, counsel for sundry supply creditors; Lilburn T. Myers, receiver, in person.

The U. S. district attorney offered as evidence before the commissioner a copy of the contract between the Trigg Company and the United States for the construction of the "Galveston," dated the 14th day of December, A. D. 1899, and also a certified copy, under seal of the Navy Department, of the report of the board of appraisal, a copy of which report was filed with the stipulation in this case on the 22nd day of June, A. D. 1903, that being all the evidence which it is at the present time proposed to be offered in regard to the "Galveston."

By Mr. E. R. Williams, counsel as stated: Counsel for the Commercial Trust Company and sundry creditors do not admit that the value fixed by the board of appraisal under the contract mentioned is conclusive, and reserve the right hereafter to introduce other testimony if desired.

LILBURN T. MYERS.

Mr. Wm. C. Stuart, counsel for sundry supply creditors, also adopts the above reservation.

The U. S. district attorney called Mr. Lilburn T. Myers as a witness on behalf of the Government. Mr. Myers, having been heretofore duly sworn, deposes as follows:

By the U. S. district attorney:

1. Q. Please look at the contract I here hand you and state whether or not it is a true copy of the contract dated April 20th, 1900, between the Trigg Company and the Secretary of the Treasury, for and on behalf of the United States, for the construction of the United States revenue cutter "Mohawk," mentioned in these proceedings, which contract is already filed with the stipulation in this cause relative to the "Mohawk."

437 Objection. By Mr. Wm. C. Stuart, counsel for, etc.: Objection is made to all the evidence and testimony introduced on behalf of the United States, inasmuch as the United States claims not to be a party to this suit.

A. It is a correct copy.

2. Q. Will you please state to the commissioner the amount paid by the Government to the Trigg company under the above-mentioned contract?

A. One hundred and forty-nine thousand four hundred and thirty-seven dollars (\$149,437.00).

3. Q. You were ordered by the court to release to the Government the property mentioned in the above stipulation. Will you be good enough to state whether you complied with the order of the court in that regard, and whether you have a receipt signed by the proper officers of the Government for the property turned over by you to the Government under the order of the court which was entered upon the above-mentioned stipulation being filed?

A. The partly completed vessel, together with the materials intended therefor, was delivered to the Government June 30th, 1903. I have a receipt of the government representative therefor.

4. Q. Will you be good enough to produce the receipt?

(Witness filed receipt in question, marked "Receipt L. T. M.")

Cross-examination:

By Mr. Wm. C. Stuart, counsel as stated:

1. XQ. Mr. Myers, you have stated the amount which was paid the William R. Trigg Company by the United States on the "Mohawk" contract, and the contract price, I believe. I wish you would state the total amount which has been earned on this contract by the Trigg company.

A. The original contract price of the vessel was two hundred and seventeen thousand dollars (\$217,000.00). During the construction, however, additions were authorized by the Government, the value of which was fixed at three thousand two hundred and seventy dollars (\$3,270.00), making two hundred and twenty thousand two hundred

and seventy dollars (\$220,270.00) the contract price of the vessel at the time of the forfeiture of the contract. My estimate is that at the time the vessel was surrendered to the Government her degree of completion was eighty-eight per cent. (88%) on the basis which the cost already incurred bore to the total cost of the completed vessel. Taking the contract price as the proper basis of value of work performed, the value of the work which had been performed at the time of the forfeiture of the contract was \$193,837.00. Of this amount there had been paid, as above shown, \$149,437.00, leaving a balance unpaid, on the value of the work done, of \$44,400.00.

2 X Q. Then this amount paid by the Government, \$149,437.00, and the remaining sum of \$44,400.00, which has not been paid, represent the total value of the property?

A. Yes, sir; that is if the contract price of the vessel is taken as the basis of computing the value of the work done and materials furnished.

Objection. The U. S. district attorney objects to the foregoing questions and answers on cross-examination, because the same are not germane to anything which was asked the witness in his examination in chief.

By Mr. E. R. Williams, counsel for, etc.:

1 X Q. Mr. Myers, will you please state whether or not, in your judgment, the price fixed in the contract is a fair one?

A. No, sir, the contract price was far too low. The actual cost of the materials and labor at the time of the failure of the company had exceeded the total contract price by a very large amount.

Objection. The U. S. district attorney here asks that the same objection be noted.

2 X Q. Then upon the basis, Mr. Myers, of the actual cost of labor and material, please say what, in your judgment, was the fair value of the vessel and material turned over to the Government in June, 1903.

A. The vessel had cost three hundred and sixty-five thousand dollars (\$365,000.00). On account, however, of the contract being taken before the completion of the plant, and the delay on the part of the contractors for delivering the equipment for the plant, the company was without the proper facilities for doing the work economically.

I estimate that the vessel cost fifty thousand dollars (\$50,000) more than she could now be constructed for in the completed plant; so that the fair cost of the work done prior to the failure would be three hundred and fifteen thousand dollars (\$315,000). Adding to this a profit of fifteen per cent. (15%), which is a reasonable profit, the value of the property which was surrendered to the Government would be about three hundred and sixty-three thousand dollars (\$363,000.00).

Objection. The U. S. district attorney notes the same objection as above; and for the further reason that in no case can the vessel or the materials applicable thereto be valued higher than on the basis of the contract price.

3. X Q. Mr. Myers, do you say, then, that the Government could not have gone into the market and secured the material and work done, as above described, for less than the amount stated by you as the fair value of the work done and material furnished by the Trigg Company, making the allowance for the failure of the contractors to put the plant in condition to do this work economically?

A. Not unless the contractor was willing to accept a profit of less than 15%.

Objection. The U. S. district attorney notes the same objection as above.

Adjourned until 12 o'clock, May 13th, 1904, at same place.

In the Chancery Court of the city of Richmond.

S. H. HAWES & CO., PLAINTIFFS,	}
v.	
WM. R. TRIGG CO., ET ALS., DEFENDANT.	

OFFICE OF WILLIAM R. TRIGG COMPANY,
Richmond, Va., May 13, 1904.

Met purusant to adjournment.

Present: L. L. Lewis, United States district attorney; Charles U. Williams, counsel for Hyde Windlass Company; Wm. C. Stuart, counsel for sundry supply creditors; George Bryan, counsel for First National Bank; Lilburn T. Myers, receiver, in person.

440 Mr. D. K. KELLOGG recalled for examination:

By Mr. Charles U. Williams, counsel for Hyde Windlass Company:

1. Q. On November 27, 1903, you testified in regard to the claim of the Hyde Windlass Company, amounting to \$4,487.82, and stated that you had examined the books of the William R. Trigg Company and found that amount to be correct, they having filed a supply lien for their claim, and having filed the items of the account with the commissioner in this cause. Will you please state whether or not the items embraced in that claim were received by the William R. Trigg Company and were necessary for the operation of the plant of the said company?

A. They were received, and were necessary to the operation of the shipyard.

Objection. Both question and answer excepted to by counsel for the First National Bank, as calling for the opinion of the witness.

Mr. Wm. C. Stuart, on behalf of all the creditors in this suit represented by Bickford & Stuart, makes the following objection to the introduction of the contract placed in evidence on yesterday by the United States district attorney:

Objection. We object to the introduction of the said contract executed by the William R. Trigg Company with the United States for the construction of the cruiser "Galveston" in so far as its contents affect the interests of the creditors represented by us in this

cause; and especially does this objection apply to any provisions contained in said contract whereby any lien is reserved, or right of title or claim of property in and to the subject-matter of the said contract, these creditors being third parties, without notice, either actual or constructive, of the contents of said contract.

Captain GEORGE E. McCONNELL is introduced as a witness for the Government, and, being duly sworn, deposes as follows:

441 By Judge L. L. Lewis, United States district attorney:

1 Q. State, if you please, what is your occupation or profession.

A. Captain of the United States Revenue-Cutter Service.

2 Q. Were you stationed at the Trigg shipyard in this city while the revenue cutter "Mohawk" was under construction?

A. I was.

3 Q. Were you there at the time the vessel was surrendered to the Government under the stipulation filed in this cause?

A. Yes, sir.

4 Q. Will you state the percentage of completion of the vessel at the time it was surrendered to the Government?

A. I judge about eighty per cent (80%).

5 Q. Does that include the unfinished vessel as well as the materials on hand applicable to her construction?

A. Yes, sir.

6 Q. Please state what, in your opinion, was the value of the property surrendered to the Government; I mean unfinished vessel and the materials above mentioned.

A. About 80% of the contract price, \$217,000. Afterwards some additions were authorized by the Government, the value of which is fixed at \$3,269.98, making \$220,269.98, the contract price of the vessel at the time of the forfeiture of the contract.

7 Q. What, in your opinion, Captain, would the vessel in its unfinished condition and the materials above mentioned at the time of the surrender of possession to the Government have sold for, if it had been offered for sale at public auction after reasonable and proper advertisement?

A. About \$75,000, I think.

Objection. By Mr. Wm. C. Stuart, counsel for, etc. Question and answer objected to on the ground that the evidence is irrelevant as showing the probable valuation of the property.

Cross-examination:

By Mr. Wm. C. Stuart, counsel for, etc.:

1 XQ. When you state that, in your opinion, the vessel and property as received by the Government, if sold at public auction,
442 would bring \$75,000, you mean, do you, that that would be what you think it would bring in case there was no demand by the Government for such a vessel?

A. Yes, sir.

2. XQ. Could the vessel as received by the Government be constructed by the Government for the amount of 80% of the contract price with the Trigg company?

A. I think so.

3. XQ. What is your estimate of 80% of the contract price for building that revenue cutter?

A. \$173,000, or something more.

4. XQ. You believe that the Government could construct that vessel and carry it to the degree of completion at which it was at that time for \$176,000, when Mr. Myers testified on yesterday, I believe you heard him, that it had cost the Trigg company to that time three hundred and sixty-odd thousand dollars?

A. I think it could.

5. XQ. Could the Government have constructed it for anything less than \$176,000?

A. I think not.

By Mr. George Bryan, counsel for, etc.:

1. XQ. You have stated that, in your opinion, the vessel would probably have brought \$75,000 if it had been offered at public auction, after proper and reasonable advertisement. Could there have been any other bidders than the Government at such a sale; and if so, who?

A. Yes, sir; merchant marine or yachtsmen.

2. XQ. Could the boat, at a stage of completion which approximated 80% for the purpose for which it was designed, have been capable of being utilized by the merchant marine or yachtsmen?

A. Only by considerable alteration of her interior construction.

3. XQ. As a matter of fact, are persons who are in search of boats for use in the merchant marine, or for yachts, in the habit of going into the market for such a piece of work as was this in its uncomplete stage?

A. Yachtsmen might, and possibly persons engaged in merchant marine; I could not state any particular case that I know of where they have.

4. XQ. What I am trying to get at is this: Mr. Myers testified yesterday that the work and materials upon the boat to that point approximated \$360,000. You have stated this morning that you think the Government could duplicate the same work for the approximate sum of \$176,000. Taking the last figure as a basis, and laying aside Mr. Myers' figure for the time, please tell us, in your own language, just how the approximate loss of \$100,000 upon the boat was sustained.

A. It is impossible for me to tell how the loss was sustained, but the Trigg Company, while constructing this vessel, was also constructing a plant. That cost, naturally, and the delay of the delivery of material, which I know was the case, put them to loss.

5. XQ. It is in this way, then, that you account for the difference between your estimate and that of Mr. Myers, is it?

A. It is.

6. XQ. You are of the opinion, as a consequence, that in making up his estimate he has figured in elements of expense which should be chargeable to the Trigg plant, are you?

A. I can not so state, sir.

7. XQ. How, then, do you account for the difference between your estimate and his?

A. It would be a matter of opinion only as to the construction of the vessel. I have no opportunity of knowing the figures of the concern, what it cost; it is merely a matter of opinion.

8. XQ. Please tell us just what experience you have had which will enable you to express an expert opinion upon the value of such work as this.

A. Only that of building the "Tuscarora" and the "Mohawk" at this plant.

9. XQ. Did that experience involve the knowledge of the price and value of supplies, labor, and the like, necessary for the construction of such a boat; I mean, were not your duties largely in connection with the technical construction of the boat, and not so much from the standpoint of the market value of the supplies and labor?

A. My duties were entirely technical in the construction of the vessel.

Redirect examination.

By Judge L. L. Lewis, U. S. district attorney:

1. Q. You have spoken, Captain, in your cross-examination, of the "Tuscarora." Please state what was the nature of that vessel.

A. The "Tuscarora" was also a revenue cutter, built by 444 the Trigg Company, and smaller in size than the "Mohawk."

2. Q. That was constructed and completed by the Trigg Company under the contract with the Government, was it?

A. It was constructed and completed and delivered under the contract with the Government.

The U. S. district attorney here offered in evidence a copy of the contract between the Government and the Trigg Company for the construction of the "Mohawk," dated April 20, 1900, a copy of which contract is filed as an exhibit with the stipulation in regard to the "Mohawk."

Objection. Mr. Wm. C. Stuart, counsel for, etc., on behalf of all of the creditors in this suit represented by Bickford & Stuart, objects to the introduction of the said contract executed by the William R. Trigg Company with the United States for the construction of the revenue cutter "Mohawk," in so far as its contents affect the interests of said creditors; and especially does this objection apply to any provisions contained in said contract whereby any lien is reserved, or right of title, or claim of property, in and to the subject matter of the said contract, these creditors being third parties, without notice, either actual or constructive, of the contents of said contract.

Recross examination.

By Mr. Wm. C. Stuart, counsel for, etc.:

1. XXQ. Captain, as I understand it, your estimates that this property would sell at \$75,000 at auction, and that the Government could construct it for \$176,000, are simply guesses, are they not?

A. Merely a matter of opinion.

2. XXQ. And based on the experience to which you have testified?

A. Yes, sir.

Chief Engineer D. McCOMAS FRENCH, a witness on behalf of the Government, being duly sworn, deposes as follows:

By Judge L. L. Lewis, U. S. district attorney:

1. Q. Please state your occupation.

445 A. Mechanical engineer in the Revenue Cutter Service. I occupy the position of chief engineer.

2. Q. Were you stationed at the Trigg shipyard as an officer of the Government, superintending the construction of the "Mohawk?"

A. Yes, sir.

3. Q. Were you at the shipyard in that capacity at the time the vessel was delivered to the Government under the stipulation filed in this cause?

A. Yes, sir.

4. Q. You have heard the questions propounded to Captain McConnell, who has just testified in his examination in chief, and his answers to those questions. Please state whether you agree with Captain McConnell in those answers.

A. Yes, sir.

Cross-examination.

By Mr. Wm. C. Stuart, counsel as stated:

1. X Q. Chief, will you please state what your experience is as to sales at auctions of such property as was the "Mohawk" as she was turned over to the United States, and in case of the sale of which Captain McConnell has testified would bring \$75,000?

A. I have attended sales of vessels that had been constructed and partly worn out, and they usually bring anywhere from 10 per cent to 50 per cent of their value.

2. X Q. You mean 10 per cent to 50 per cent of the actual value?

A. Yes; such has been my experience.

3. X Q. Then you would say that the actual value of this property was anywhere from \$150,000 to \$750,000, would you not?

A. I would hardly say that; the value of anything depends upon whether you want it or not; supply and demand fix the value of all articles.

4. X Q. If you state that the "Mohawk" would bring \$75,000 at public auction, then she must have been worth at least \$150,000, must she not, if vessels bring from 10 per cent to 50 per cent?

A. Yes, sir.

5. X Q. Then you do not mean to state that \$75,000 is, in your opinion, the actual value of that property?

A. No; I would not say that \$75,000 would be the actual value of the material and work upon the vessel as expended; but if this vessel was built for a specific purpose and the purchaser wanted to apply it to other purposes and make alterations, he would take that into consideration in making his bid.

6. X Q. In making your estimate of \$75,000, as a public auction price, then you base that upon the fact, do you not, that there would be no demand for a vessel to be used for the specific purpose for which the "Mohawk" was built except by the United States?

A. Such has generally been my observation.

7. X Q. Could the United States have built and constructed the "Mohawk" to the degree of completion which she had reached at the time of her delivery to the United States for the percentage of the contract price which had then been earned by the Trigg Company?

A. Qualify your question; could it be built in the navy, you mean?

8. X Q. Under exactly the conditions under which the "Mohawk" was constructed?

A. In the Trigg Company yard?

9. X Q. Or in a similar plant, in working condition?

A. Yes, I believe it could be done; but the plant must be in good working condition.

10. X Q. Well, then, when Mr. L. T. Myers testifies that after making an allowance of \$50,000, which he said was a liberal one, for uneconomical manner of carrying out this contract by reason of delays in obtaining material and insufficient equipment of the plant, it cost the Trigg Company \$115,000 more than had been earned under that contract, how do you explain this difference?

A. I do not know.

11. X Q. As a matter of fact, has your experience made you acquainted at all with the market value of materials and supplies furnished for the building of ships and the cost of labor?

A. I understand pretty well the cost of labor, but the market fluctuates in value, and I am not thoroughly posted in values.

12. X Q. Then, when Mr. Myers testifies as to this difference in actual figures, are you prepared to say that the Government could have constructed and completed the work to the degree of completion it had attained for \$176,000?

447 A. That is my opinion.

13. X Q. How do you account for the difference between your opinion that it could be completed for \$176,000 and the \$115,000 shown by the figures testified to by Mr. Myers?

A. Only on account of the method of doing work and of the disorganized condition of the work while under construction.

14. X Q. But, chief, Mr. Myers states that it cost the Trigg Company \$365,000 to do this work to that stage and that he allowed the liberal amount of \$50,000 for loss on account of lack of equipment, delays, etc., in obtaining material, and still there remains the difference of \$115,000, as shown by the figures.

A. Maybe his estimate was not large enough.

15. X Q. Please state, if it was not large enough, what in your opinion would have been the proper estimate for such allowance?

A. I should think about 50 per cent of his cost.

16. X Q. Upon what do you base this statement that he should have allowed 50 per cent of the cost instead of \$50,000, which, as he testified, is a liberal one, and is based upon information obtained from the books of the company?

A. It is a mere matter of opinion.

17. X Q. Is it not a matter of fact that these estimates that you are giving are mere guesses on your part?

A. Merely a matter of opinion.

18. X Q. Which amounts to a speculative guess?

A. Everyone's opinion is speculative.

By Mr. George Bryan, counsel as stated:

1. X Q. You stated in reply to one of Mr. Stuart's early questions upon cross-examination that your concurrence in the estimate of Captain McConnell that the "Mohawk" at the stage of completion at the time it was surrendered to the Government was worth in the neighborhood of \$75,000 was governed largely by the principles of the law of supply and demand. We are merely trying to get at the facts in this case as nearly as we can, under the circumstances, and, to draw out your views a little further, I will ask you this question: Suppose some Government other than the United States had at that time been in need of just such a vessel. Do you mean to say that you would have placed the value of \$75,000 upon it under those circumstances?

A. No; while I would really think the value of the vessel
448 was at the time really over 50 per cent or even 100 per cent over the \$75,000, I was only speaking of what would be bid, and I based this upon observation.

2. XQ. So you are of the opinion that aside from the question of a public auction and under circumstances such as I have suggested, the real worth of the vessel was 100 per cent more than the \$75,000?

A. The real value of the vessel as constructed would be about \$175,000, as she was turned over.

3. XQ. So that really, if I understand you correctly, the difference in the price is due to the single element of the limited number of bidders at such a public auction?

A. Yes, sir.

4. XQ. You have testified also, in reply to another of Mr. Stuart's questions, when he referred to the estimate placed upon this vessel by Mr. Myers in his deposition yesterday, that he might have been mistaken as to the liberality of the item of \$50,000 allowance, and that it may have been, in your opinion, 50 per cent of the cost of the vessel to the Trigg Company. Will you please tell us what personal knowledge you have of the insufficient equipment of the Trigg Company to do this work which would lead you to express under oath an opinion that it may have been 50 per cent of the cost of the vessel?

A. I have no personal knowledge; I merely stated an opinion. I have no access to their books, cost, or anything of that kind.

5. XQ. And you have no personal knowledge of the actual cost to the Trigg Company on account of this item?

A. I have no personal knowledge of what they paid.

6. XQ. So that, as far as any personal and accurate knowledge on your part of these matters is concerned, the sum to be allowed upon this item may have as well been 1 per cent as 50 per cent.

A. It is merely a matter of opinion.

7. XQ. What was the displacement of the "Mohawk?"

A. I think she was between 900 and 1,000 tons; I forget the exact figures.

8. XQ. I am testing your memory.

A. I think they said about 900 tons; her exact displacement I do not know.

7. XQ. I hold in my hand a pamphlet which purports to be the Annual Report of the Bureau of Construction and Repair of the Navy for the fiscal year ending June 30, 1902. On pages 180 and 181 of that pamphlet it appears that the contract price of the hull and machinery of the gunboat "Detroit" was \$612,500, and that its displacement was 2,089 tons. What was the price per ton of the "Detroit?"

A. That averaged up about \$347.00 per ton.

8. XQ. Now tell us, please, as a matter of fact are not the revenue cutters as well built and finely finished as a gunboat?

A. I do not know. I have no experience with gunboats. The revenue cutters are well finished.

9. XQ. But you have testified to a considerable extent to-day to your opinion when you had no personal knowledge of the matters of inquiry. What is your opinion?

A. I think they are about as well finished as gunboats, as far as the workmanship is concerned.

10. XQ. Tell us now, please, if the "Detroit" cost, as you have said, some \$347.00 per ton in displacement, how much the "Mohawk" would have cost at the same rate?

A. That would be \$312,300, at that rate, but do you know the design of the "Detroit?" I do not. You can not make a comparison.

11. XQ. Let me ask you, in conclusion, this question: If you were at the head of a shipbuilding concern instead of being connected with the government service, would you undertake to construct the "Mohawk" for \$217,000?

A. You mean at the time this contract was given?

12. XQ. Yes.

A. I think that was liberal at the time the contract was given. It is the largest price we have ever paid per ton for a revenue cutter, so I have been informed.

13. XQ. If you had been in the shipbuilding business and had constructed the "Mohawk" to the percentage stated, namely, 80 per cent, would you have been willing to sell her under these circumstances for \$50,000?

A. No, not if she belonged to me; but if I could not get more than \$50,000, and had to sell her, I would take the \$50,000.

Further this deponent sayeth not.

Captain GEORGE E. McCONNELL, recalled for recross-examination.

By Mr. George Bryan, counsel for, etc.:

450 1. XXQ. If, instead of being connected with the Government, you were in the shipbuilding business, would you like to take a contract for building a revenue cutter like the "Mohawk" for \$217,000?

Objection. Question objected to by the U. S. district attorney as being illegal.

A. No, sir.

2. XXQ. Is it not notorious that everybody who has engaged in the business of constructing revenue cutters has lost money by them?

A. I have so understood.

The U. S. district attorney here offers in evidence the two contracts between the Government, represented by Captain J. C. Sanford, Corps of Engineers, United States Army, and the Trigg Company, for the construction of the dredge "Benyouard," said contracts being each dated September 9th, 1901, and specifications attached to said contracts.

Objection. By Mr. Wm. C. Stuart, counsel for, etc.: We desire the commissiomer to note the same objection to these two contracts which we have noted in the case of the contracts for the "Galveston" and "Mohawk."

Mr. LILBURN T. MYERS recalled for examination.

By the U. S. district attorney:

1. Q. Will you please state the amount of money paid by the Government on account of these contracts to the Trigg Company for the construction of the dredge "Benyouard?"

A. The Government had paid on the contract for the hull and propelling machinery \$142,550.80. The contract price was \$254,555.00.

2. Q. You were ordered by the court to release to the Government the "Benyouard" and materials applicable thereto specified in the stipulation filed in regard to the dredge in this cause. Will you be good enough to state whether you complied with the order of the court in that regard, and whether you have a receipt signed by the proper officers of the Government for the property turned over by you to the Government under the order of the court?

451 A. Yes, I have already delivered the property, and I have the receipts.

Mr. Myers here filed the receipts above mentioned, and also similar receipts for the cruiser "Galveston" and materials applicable to her construction.

Cross-examination.

By Mr. Wm. C. Stuart, counsel for, etc.:

1. X Q. Mr. Myers, subdivision 6 of section 18 of the contract for the construction of the "Galveston" provided as follows:

"When a payment is to be made under this contract, as a condition precedent thereto the Secretary of the Navy may in his discretion require, for the protection of the party of the second part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights in rem of any kind against said vessel, or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired for or on account of any work done, or any machinery, fitting, equipment, or material already incorporated as a part of said vessel, or on hand for that purpose, or that such liens or rights have either been released absolutely or so subordinated to the rights of the Government as to make its lien for all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel."

Did the Secretary of the Navy, or the Navy Department, at any time prior to your appointment as receiver, require any such release or the compliance with that section before making payment on the contracts?

A. No, sir.

2. X Q. Did the other departments, in the case of other contracts, ever require any such release on the part of the Trigg Company?

A. No, sir.

Mr. L. F. HAYDEN, a witness on behalf of the Government, being duly sworn, deposes as follows, in answer to questions propounded:

452 By the U. S. district attorney:

1. Q. Please state what is your occupation?

A. I am inspector in the Engineer Department of the Army.

2. Q. Were you stationed at the Trigg shipyard in this city as an agent of the Government during the construction of the dredge "Benyuard?"

A. I was.

3. Q. Were you there at the time the dredge was delivered to the Government under the stipulation filed in this cause?

A. Yes, sir.

4. Q. What was the percentage of completion of the dredge at the time it was turned over to the Government under the order of the court?

A. I made it 71.3 per cent.

5. Q. Will you state, if you can, what, in your opinion, was the value of the dredge if it had been sold in its then uncompleted condition?

A. I do not believe that the hull would have brought over \$25,000, and the machinery perhaps \$10,000.

6. Q. Do you include in your answer to the above question, in regard to the percentage of completion of the vessel, the materials on hand applicable to her construction?

A. Everything except the material furnished by the Bucyrus Company.

Mr. LILBURN T. MYERS was here recalled, as witness for certain creditors, for examination.

By Mr. Wm. C. Stuart, counsel for, etc.:

1. Q. Please state what your estimate of the percentage of completion of the "Benyuard" was at the time of her delivery to the Government?

A. About 72 per cent.

2. Q. What had been earned by the Trigg Company on that contract at the time it was turned over to the United States?

A. Taking the contract price as the proper basis of work performed, the Trigg Company had earned \$182,410.

3. Q. Of which, as I understand you, there had been paid \$142,550. Is that correct?

A. It is.

4. Q. Will you state to the commissioner the actual cost to
453 the Trigg Company of completing that dredge to the stage of completion which it had reached at the time of its delivery to the Government?

Objection. The U. S. district attorney objects to this question as illegal and improper.

A. \$261,872.

5. Q. Making every allowance for the lack of economy on the part of the company in doing the work, and the delays, etc., which would make the amount greater than it would be otherwise, please state what the cost of the work actually would be?

Objection. The U. S. district attorney makes the same objection noted above; and for the further reason that in no case can the dredge or the materials applicable thereto be valued higher than on the basis of the contract price.

A. I should say \$225,000.

6. Q. State what knowledge this evidence is based upon, as to the figures given above.

A. The figures of cost are taken from the books of the company—the actual labor and material paid for and the pro rata proportion of the general operating expenses chargeable to that contract upon the basis of the contract price.

7. Q. Were books and accurate accounts kept of all these different items charged up in the course of the construction of these boats; and if so, have you actual knowledge of these items and books?

A. Yes, sir.

8. Q. Is it upon this knowledge that you have based your evidence as to the figures just mentioned above?

A. Yes, sir.

9. Q. Then I will ask you whether a dredge such as the "Benyard" could be completed to the extent it was when delivered to the Government, 72 per cent, by any shipbuilding company for \$182,410 without incurring a loss?

A. No, sir; it could not be done.

Objection. The U. S. district attorney makes the same objection noted above.

454 10. Q. Could it be constructed by the Government without a loss for \$182,410?

Objection. The U. S. district attorney makes the same objection noted above.

A. No; judging from the experience of the Government in doing its own work, as shown by the records, it would have cost the Government more money than the work could have been done for by private contract.

11. Q. And you state that after making the allowance testified to above the actual cost to the Trigg Company was \$225,000, that there had been earned \$182,410, and consequently there was a loss to the Trigg Company amounting to the difference between those two amounts, \$42,590?

Objection. The U. S. district attorney makes the same objection noted above.

A. There was an actual loss of a greater amount, but a legitimate loss of the difference between \$182,410 and \$225,000.

Cross-examination:

Mr. L. F. HAYDEN on the stand.

By Mr. Wm. C. Stuart, counsel for, etc.:

1. XQ. Mr. Hayden, what is your experience as a shipbuilder and constructor of vessels such as the dredge "Benyard?"

A. That was my first experience, when I came here, in that class of work.

2. XQ. In what capacity did you act here for the Government in the matter of that contract?

A. As an inspector of material and labor.

3. XQ. Do you know anything at all about the market price of materials and supplies such as were used in the construction of the "Benyard," and the cost of labor in doing the work under that contract?

A. Yes, sir; my work has been in that line for the past ten or twelve years, not as shipbuilder but as constructing bridge work.

455 4. XQ. With this knowledge, then, you do not mean to state, do you, that the value of that dredge at the time it was delivered to the Government was only \$25,000?

A. No, I do not state that; I said it was all she would have brought at auction if sold.

5. XQ. You mean that is your opinion of what would be the highest bid for the property if sold at auction?

A. Yes, sir.

6. XQ. Upon what knowledge do you base this opinion as to what would be the highest bid if it was sold?

A. No other concern except the Government would want a boat of that class, and it would be so very expensive to change the interior construction to adapt the vessel to any other use.

7. XQ. But, even conceding that there would be no demand for such a vessel except by the Government, your testimony that the highest bid at an auction sale would be \$25,000 is merely a guess on your part, is it not?

A. No, I should call it more than that; I should call it an estimate.

8. XQ. An estimate based upon what?

A. An experience based upon attending sales of other vessels, and knowledge of the uses to which the boat could be placed.

9. XQ. Please tell us what it would cost the Government to complete this dredge 72 per cent at the present time.

A. I think it could do it for about \$185,000, because steel is higher now.

10. XQ. Could it have completed it to that extent for less than \$182,000 if it entered into the work at the time the Trigg Company did?

A. I cannot say that it could for any less than that.

11. XQ. Will you please tell me, if you know, whether the Government has now any dredges in course of completion by contractors or itself?

A. Yes, we have five in course of completion by the Maryland Steel Company at Sparrows Point.

12. XQ. Do not you think that there would be a chance of some of these contractors who are building these dredges bidding in case an auction sale was held of this property more than the amount you stated, \$25,000?

A. I think the chance would be very slight; there is a possibility of it.

13. XQ. Could not they sell a dredge such as that to the Government at a considerable profit if they could purchase one at 72 per cent for \$25,000?

A. I do not know whether they could or not.

14. X Q. If the Government contracts to pay the builders of dredges \$254,000, and a builder was able to purchase at a sale a similar piece of property for \$25,000, would not there be a considerable profit in such a transaction to the builder who might become a purchaser of the dredge at an auction sale?

A. It seems so, if they could sell it.

15. X Q. When the Government is in the market as a purchaser do you mean to say that in the case of an auction sale there would be no bidders among the ship contractors for such a piece of property?

A. I can not say.

16. X Q. If there were several of these bidders, then is it not altogether probable that there would be a bid offered of two, or three, or four times as much as \$25,000?

A. I do not think so.

17. X Q. Suppose there were four of these bidders at the sale, do you think the highest bid would be \$25,000?

A. That is just my judgment; of course, there might be higher.

18. X Q. That is a mere guess?

A. No; I would not call it a guess; it is an estimate.

19. X Q. An estimate of what the highest bid would be at an auction sale at which there were bidders. You say, then, that \$25,000 is your highest estimate of a bid, in case there were bidders at such a sale?

A. Yes, I think that would be right.

20. X Q. Why did you testify a little while ago that the estimate was based on the fact that there was a slight demand for the property?

A. I think there would be a few bidders.

21. X Q. Then your estimate would not hold water in the case of bidders, would it?

A. I think it would.

22. X Q. How does this dredge compare with the dredges now being built by the Maryland Steel Company?

A. There are two being built by the Maryland Steel Company very much like this; the pumping machinery is almost exactly a duplicate, the propelling machinery is exactly the same, the same beam, the same scantling, the same depth.

457 23. XQ. What is their contract price?

A. \$304,000.

24. XQ. That is about \$50,000 greater than the contract price for the "Benyuard?"

A. That includes the hull and pumping machinery, too.

25. XQ. The contract for the "Benyuard" was \$286,555. Then the price of this is considerably greater, is it not?

A. About \$18,000 more.

26. XQ. What time were those contracts let?

A. Last year, about August, I think.

27. XQ. If, then, the "Benyuard completed 72," which you say is almost a duplicate of these dredges, was thrown upon the market for sale at auction, and the Government was willing at the same time to contract to pay \$304,000 for such a dredge, do you mean to say that there would be no bidders among the ship contractors at such a sale who would be willing to pay more than \$25,000 for such a piece of property?

A. No; I cannot say there would not be.

28. XQ. As a matter of fact, if the Government was willing to pay \$304,000 for such a dredge, is it not entirely within the probabilities that an auction sale at such a time would bring a great deal larger amount than \$25,000?

A. I do not think it would, because vessels always sell very low, especially special work like that.

29. XQ. Then under no circumstances, as I understand it, you testify that this property, if sold at auction, would bring more than \$25,000?

A. That is my estimate of it.

Further this deponent sayeth not.

Objection. To each of the foregoing questions in cross-examination of the witness the U. S. district attorney makes the same objection last above noted.

Mr. LILBURN T. MYERS recalled.

By the U. S. district attorney:

1. Q. Mr. Myers, you mean to be entirely exact when you speak of the dredge having been completed to the extent of 72 per cent. when turned over to the Government?

A. No; it is impossible to make estimates of completion exact, they are only approximate. The Government's estimate of 71.3 per cent is so near my own estimate that I would not question it.

Adjourned to—

Depositions with respect to "Mohawk" returned with Commissioner Eugene C. Massie's report No. 4 filed in clerk's office July 19th, 1906.

S. H. HAWES & Co., PLAINTIFFS,	}
v.	
WM. R. TRIGG CO. ET ALS., DEFENDANTS.	

OFFICE OF WILLIAM R. TRIGG COMPANY,
Richmond, Va., December 14th, 1903.

Met pursuant to adjournment.

Present: Mr. John Pickrell, counsel for the Standard Oil Company of New York; Mr. Eppa Hunton, Mr. Wm. C. Stuart, whose appearances have been heretofore noted.

Mr. R. C. VEIT, a witness on behalf of the Standard Oil Company of New York, being duly sworn, deposes and says, in answer to questions propounded:

By Mr. John Pickrell, counsel as stated:

1. Q. Please state your name, age, residence, and occupation.

A. Richard C. Veit; I live at 310 East 73rd st., New York City; I am manager of the litherage department of the Standard Oil Company of New York.

2. Q. Have you a contract between the William R. Trigg Company and the Standard Oil Company of New York in reference to the construction of the oil tank steamship "Captain A. F. Lucas," otherwise known as Hull No. 19?

A. Yes, sir.

3. Q. Please produce it, and look at the signatures thereto and state whether you recognize them.

A. This is the contract for the construction of the steam-
459 ship "Lucas." It is dated November 7th, 1901, signed by the William R. Trigg Company, by L. T. Myers, vice-president, and by the Standard Oil Company of New York, by John D. Archibald, vice-president. The details were arranged by myself with Mr. Myers for the Trigg Company. I recognize the signatures as those of Mr. Myers, as vice-president of the Wm. R. Trigg Co.; and Mr. John D. Archibald, vice-president of the Standard Oil Co., attested by the assistant secretary, Charles T. White. I file this contract as a part of my deposition, marked "Standard Oil Co. of N. Y., No. 1."

Objection. Mr. Wm. C. Stuart, on behalf of the creditors represented by Messrs. Bickford & Stuart, objects to the introduction of the contract, in so far as it is attempted by its provisions to affect in any way the interests of these creditors; and especially does this objection apply to any provisions thereof whereby there may be reserved, or claimed to be reserved, any right of property or title in the subject matter, these creditors being innocent third parties, without notice, either actual or constructive, of the provisions of the same.

4. Q. Is that the contract under which the oil tank steamship "Capt. A. F. Lucas," hull and machinery, has been constructed up to its present stage of completion?

A. Yes, sir.

5. Q. Please state what payments have been made by the Standard Oil Company of New York under that contract, and the dates of same?

A. January 3, 1902, payment "when first material arrives in yards," \$21,975. May 23, payments "when engine cylinder patterns are completed," \$21,975. June 30, payment "when keel is laid," \$21,975. July 28, payment "when one-quarter frames are up," \$21,975. August 18, payment "when one-half in frame," on account, \$20,975. September 5, balance payment "when one-half in frame," \$1,000. October 17, payment "when boiler material is in
460 yard," on account, \$12,000. October 21, balance payment, "when boiler material is in yard," \$9,975. August 28, payment "when engine cylinders are cast," \$21,975. September 22, payment "when three-quarters frames are up," \$21,975. November 26, payment "when one-quarter plated," \$21,975. December 16, payment to Planters National Bank, on order of Wm. R. Trigg Co., for payment "when all frames are up," \$21,975.

6. Q. These payments were all made in the year 1902, were they not?

A. They began in January and ended in December, 1902. They amount to ten full payments in all, \$219,750.

7. Q. Have you the vouchers for each payment? If so, please file them as a part of your deposition.

A. I herewith file the vouchers for the payments referred to in the two preceding answers.

(These vouchers and the letters attached to them are fastened in one parcel, marked "Standard Oil Co. of N. Y., No. 2.")

Appearance of Mr. A. W. Patterson, counsel for Savings Bank of Richmond, and Mr. George Bryan, counsel for First National Bank, is here noted.

Objection. Mr. Wm. C. Stuart, on behalf of creditors represented by Bickford & Stuart, and Mr. Eppa Hunton, on behalf of creditors represented by his firm, object to the introduction of all correspondence between the Wm. R. Trigg Co. and the Standard Oil Co. of New York, as immaterial, irrelevant, and inadmissible, in so far as it purports to construe any of the provisions of the contract between the parties, or to prove any understanding had between them, as to any title or right of property in the subject matter.

8. Q. Who on behalf of your company made or supervised the payments as to which you have testified?

A. I did.

9. Q. State if all these payments were made at the stages of delivery of material or completion or work specified in the contract.

461 Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., as being immaterial, as far as it is an attempt to show that as the payments were made at these different stages the title passed to the Standard Oil Co.

A. The payments were to be made in twenty (20) equal payments, based upon the delivery of material in the yard and the progress of the work, as specified in the contract. The contract was an unusual one in regard to payments, in that we had never made a first payment on any previous contract until the keel was laid. At the solicitation of Mr. Myers, we made the payments a greater number; and on his explanation that he would have to pay for the material as it came into the yard, we agreed to make the payments as the material commenced to arrive, and where we ordinarily would have made our first payment when keel was laid, we had made some \$43,950 of payments before that payment was due, that is, payment "when first material arrives in yard," and "when engine cylinder patterns are completed."

10. Q. The payments were then made at the stages mentioned in the contract for payments?

A. Yes, sir.

11. Q. The contract provides that the vessel is "to be constructed subject to the inspection and approval of a superintendent and surveyor to be appointed by the party of the second party, with full power to reject or approve any materials or articles used in the construction or equipment of said vessel, and at any stage of the work before final approval," and further agrees "that full access to the work and full facilities for the inspection of same shall at all times be afforded to the said superintendent, surveyor, and their representatives." The contract also contains, just after the stages at which

payments are to be made, the following provision: "Providing, however, that the above payments shall be made only upon the production of certificates from the superintendent and surveyor to the effect that the work of construction has progressed satisfactorily up to the point at which such payments become due, and before final payment, that the vessel and machinery are satisfactory in all respects." Please state, Mr. Veit, what was done under the first part of the extract which I have quoted from the contract in regard to the surveyor and superintendent?

462 Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the following: This line of examination is objected to on the ground of its immateriality, and as being inadmissible as extrinsic evidence introduced for the purpose of construing a contract which is unambiguous. The same objection applies to subsequent similar questions.

Mr. Eppa Hunton and counsel for other creditors unite in this objection.

A. The Wm. R. Trigg Co. were notified that Mr. D. E. Ford was to be the superintendent in charge of construction, and that he would have a number of assistants; and all plans and detailed specifications and copies of orders for material were to be filed with him; that the Pittsburg Testing Laboratory were to test the material at the mills; and all payments would be made on his certification that they were due as per contract.

12. Q. Please state whether or not Mr. Ford and his assistants did act in the capacities mentioned in the notice which you say your company gave to the Wm. R. Trigg Co.

A. He did; and copies of all orders for materials, supplies, etc., were sent to Mr. Ford, and he approved all the details of plans, and certified to payments.

13. Q. Did you have an inspector or surveyor stationed at the yards of the Wm. R. Trigg Co. in charge of this work? If so, what is his name?

A. Mr. Ford and his assistant, Mr. Drake, made frequent visits to the yard, inspecting the work, and certifying to the arrival of material, up to October or November, 1902, when his assistant, Mr. Atherholt, was stationed permanently as representing Mr. Ford.

14. Q. How long did Mr. Atherholt remain at the yard, in charge of the work of construction?

A. To the best of my knowledge and belief, he remained here until July or August, 1903.

15. Q. Why was Mr. Atherholt kept here after the appointment of the receiver, which was on December 23rd, 1902?

A. To look after the property of the Standard Oil Co.

Objection. Mr. Wm. C. Stuart, counsel for, etc., objects on the ground that the answer assumes that it is the property of the
463 Standard Oil Co., and states the Standard Oil Company's construction of the contract, which is irrelevant and inadmissible.

16. Q. Was any material or machinery allowed to go into the "Lucas" or its engines until it had been inspected and approved by your surveyors and superintendent?

A. No, sir.

Objection. Mr. Wm. C. Stuart, counsel for, etc., objects to question and answer as being immaterial.

17. Q. Was not Mr. Atherholt stationed here for that sole purpose?

Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the same objection as above.

A. Yes, sir.

18. Q. The inventory filed by the receiver shows a quantity of plates, frames, and other material, as ordered for the steamship "Captain A. F. Lucas" and assigned to it upon the books of the Wm. R. Trigg Co. State what action, if any, was taken by your surveyors, or superintendent, or inspectors, with respect to the material.

Objection. Mr. Wm. C. Stuart, counsel for, etc., objects to this question, for the reason that it is inadmissible and immaterial, as an attempt to show by the grouping of the material the construction of the Standard Oil Co. of the terms of this contract.

A. We left our inspector here to look after the material which belonged to us.

19. Q. You have stated above that when material was ordered by the Wm. R. Trigg Co. for the "Lucas," copy of the order was first transmitted to Mr. Ford, your superintendent appointed over the construction of this vessel, and that the material so ordered was inspected by the Pittsburg Testing Laboratory. Please state whether the material assigned to this vessel by the Wm. R. Trigg Co., and so designated on the inventory filed by the receiver with the papers in this cause, was ordered in that way, and tested in that way.

464 Objection. Question is objected to by Mr. Wm. C. Stuart, counsel for, etc., as irrelevant and immaterial.

A. By arrangement, every particle of the material should have been so tested before coming to the yard, and we paid for such testing to the Pittsburg Testing Laboratory Company.

20. Q. Please state whether or not any of the payments testified by you to have been made under this contract were made without the certificate of the superintendent and surveyor of construction to the effect that the work of construction had progressed satisfactorily up to the point at which such payments became due?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., as irrelevant and immaterial.

A. We made no payments without the certification of Mr. Ford that the work had progressed satisfactorily up to the point that the payment was due.

20. Q. I notice in one of the payments which by the terms of the contract was to be made "when the boiler material arrived at yard," was made in two separate instalments to the Wm. R. Trigg Co., instead of in one lump sum as was usual. Please explain that.

Objection. Mr. Wm. C. Stuart, counsel for, etc., makes the same objection noted above.

A. The contract provided for payment "when boiler material was in yard." Mr. Myers notified me in May, 1902, that he had closed a contract with the Wm. Cramp & Sons Ship & Engine Building Company, of Philadelphia, for the construction of these boilers, and, at the request of Mr. Myers, on October 17th, we sent him a check for \$12,000 as part of this payment, calling his attention to the fact that

as the material for the boilers was not in the Trigg shipyard, we should have an agreement with the Cramps that the ownership of the boiler material should vest with the Standard Oil Co. of New York, before making the full payment; and on receipt of an agreement from the Wm. Cramp & Sons Ship & Engine Building Co., dated October

21st, that the ownership of the boilers would vest in the Standard Oil Co., to the extent of the payments made by the Wm. R. Trigg Co., we made the final payment "when boiler material is in yard," to the Wm. R. Trigg Co. on October 21st, our counsel advising that as the material was not in the Trigg shipyard the ownership would not vest in us unless such agreement was had with the Cramp Co. and the Trigg Co. The correspondence relative to this matter is made up into one parcel marked "Standard Oil Co. of N. Y., Bo. 3," and is filed by me as a part of this my answer.

Exception. This answer is excepted to by Mr. Eppa Hunton, counsel for, etc., so far as it refers to the contract with Cramp & Sons and the advice of counsel of the Standard Oil Co., as irrelevant, immaterial, and hearsay. The filing of the letters as an exhibit with this answer is also excepted to, upon the same grounds.

Counsel for the Standard Oil Co. of New York replies that he does not claim the correspondence in question would be evidence, as a mere ex parte opinion of counsel for the Standard Oil Co. of New York, or any of the agents of that company; but he does claim it to be evidence because it was not only the construction of the contract by the Standard Oil Co., but that construction was assented to and carried into practical operation by the Wm. R. Trigg Co. also, it being a proposition of law generally admitted that the practical construction put upon a contract by both parties to it is most useful and valuable in reaching a proper conclusion as to its real meaning.

Counsel for the creditors reply that this was not a contemporaneous construction of the contract by either party thereto, but was an absolutely independent agreement entered into by the Wm. R. Trigg Co. in order to secure money.

22. Q. Before leaving the subject of these payments, as to which you have testified, there are two matters which I wish you would explain: One is that one of the payments was made to the Planters National Bank of Richmond; and in the case of another payment, \$1,000 was withheld for a time.

Objection. Question and any answer thereto objected to by Mr. Wm. C. Stuart, counsel for, etc., as immaterial and irrelevant.

A. On the payment made August 18th, "when one-half in frame," \$1,000 was withheld on account of an attachment issued by the sheriff of New York County, and filed with the Standard Oil Co. of New York, for \$658.32; which attachment was released September 4, 1902, and the final payment of \$1,000 made September 5th. The 10th payment, "when all frames are up," \$21,975, was made to the Planters National Bank under an assignment which is attached to the voucher.

Objection. Answer objected to by Mr. Wm. C. Stuart, counsel for, etc., as being secondary evidence, and hearsay, to a great extent, and also immaterial.

Appearance of Mr. J. J. Leake, counsel as stated, is here noted.

23. Q. On page 22 of the specifications attached to said contract as a part thereof, there is this item:

"Oil pumps—Two. To be supplied by owners with 10" suction, delivered in yard of builders; the latter to put them in and connect them to sea valves, oil tanks and manifolds, and to supply all fittings, valves, vacuum chambers, pipes, floor plates, ladders, gratings, drip pans, etc. To make ready for work for which they are intended." Will you explain that item, and say what was done under it?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., on the ground that the contents of the contract or specifications are inadmissible and incompetent evidence as against the creditors of the Wm. R. Trigg Co., as is also the construction of the Standard Oil Company's representative of the specifications.

A. The Standard Oil Co. were to purchase the cargo pumps themselves, which was done and the pumps delivered at the Trigg shipyard.

24. Q. Was there any other machinery that stood in the same case with the two pumps to which you have testified?

467 Objection. Mr. Wm. C. Stuart, counsel for, etc., makes the same objection noted above.

A. Yes; the towing machine was to be provided, and was purchased by the Standard Oil Co. and delivered to the Trigg shipyard. It is not mentioned in the specifications or contract, except in the hull specifications, which provide that the builders shall build a towing-machine house for the towing machine.

Objection. Mr. Wm. C. Stuart makes the same objection noted above, and also because it is varying the terms of a written contract.

25. Q. Were these pumps and this towing machine turned over to you by decree of court, since the receiver was appointed, as being the property of your company?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., as being immaterial and irrelevant.

A. Yes; together with a ballast donkey pump, mentioned on page 21 of the hull specifications, which provides that "ballast donkey is to be supplied by owners."

26. Q. You have said that this contract was made by the Wm. R. Trigg Co. with you, acting for the Standard Oil Co. of New York. Please state how it was made.

A. The specifications were sent out to various builders, and the Wm. R. Trigg Co. made a bid for the construction, based upon these specifications, which they figured on, and which were made a part of the contract by the terms of the contract itself.

27. Q. In the course of the construction of this vessel under your contract with the Trigg Co., were you frequently at Richmond, and did you have conference with the officers of the Trigg Co. in that city or New York, in respect to the contract and the vessel being built under it?

Objection. Question objected to by Mr. Bryan, counsel for the First National Bank, as leading.

A. Naturally; it was an important contract, and we had a number of conferences, both in New York and Richmond.

468 28. Q. Please state what was the construction put upon the contract as to ownership, if any, by you as well as by the officers of the Wm. R. Trigg Co., of the vessel in process of construction under this contract.

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., as the construction of the contract is one of law, and it is inadmissible, immaterial, and irrelevant; and, further, because the witness must state the facts, and not his own conclusions.

A. My conferences were entirely with Mr. Myers, and he frequently expressed himself as believing that the ownership of the steamer we were building vested in the Standard Oil Co. to the extent to which they had made payments, and I certainly never placed any other construction on the contract.

Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the following: In view of the above answer, additional emphasis is here given to the above objection; and it is also objected to as hearsay; and further objected to because Mr. Myers' opinion is a matter of hearsay.

Cross-examination.

By Mr. Wm. C. Stuart, counsel as stated:

1. X Q. Mr. Veit, you stated that under a certain decree of the judge of the Chancery Court of the city of Richmond certain property was turned over to the Standard Oil Co. Please state again what this property was.

A. Two cargo pumps, a towing machine, and a donkey ballast pump.

2. X Q. You are certain that that is all?

A. I think that is all.

3. X Q. Why has not the court turned over the rest of this property?

A. We are waiting for the decision of the court on that question.

By Mr. Eppa Hunton, counsel as stated:

1. X Q. To whom was this property shipped—the Trigg Co.?

469 A. I can not say how the articles were shipped; but it would not have been an unusual thing to have shipped it to a ship-building company, altogether we had paid for the articles.

2. XQ. Mr. Veit, you have testified as to certain conversations with Mr. Myers as to his opinion of the ownership of this boat; when and where did these conversations take place?

A. In my office at New York. Just what period they covered, or when they were, I cannot say.

3. XQ. Were they prior or subsequent to the appointment of the receiver?

A. That I cannot testify to positively.

By Mr. Wm. C. Stuart, counsel as stated:

4. XQ. These conversations simply gave the opinion of yourself and Mr. Myers as to the title, did they not?

A. We had made the contract, and we had endeavored to do both parties justice. On my part the contract was drawn up entirely on what I thought was proper; and I thought that Mr. Myers had done the same thing for his company. As long as we understood it, we were technically the only parties responsible for what was intended to be conveyed by the contract, as representing the two companies to the tract.

Objection. This answer is objected to by Mr. Wm. C. Stuart, counsel for, etc., as giving mere impressions, and as being not responsive to the question.

Further this deponent sayeth not.

Signature waived by consent of all parties.

Mr. D. E. FORD, a witness on behalf of the Standard Oil Co. of New York, being duly sworn, deposes and says as follows, in answer to question propounded:

By Mr. John Pickrell, counsel as stated:

1. Q. Please state your name, age, resident, and present occupation?

A. Daniel E. Ford; New York City; superintendent of marine construction for the Standard Oil Co.; age, 43.

2. Q. Please state whether or not you are the superintendent and surveyor provided by the contract under which the "Lucas" was constructed by the Wm. R. Trigg Co.

470 A. Yes; I drew up the specifications for this vessel, and was appointed superintendent of construction. In November, 1901, when the contract was signed, I was in Cleveland. Shortly after my return home I came to Richmond to go over the details of the different plans; and after these working plans were finished, prints for same were forwarded to me at Philadelphia for my approval. All plans for this vessel up to the date when the company closed down were approved in my office, which was located in Philadelphia at that time. All auxiliaries ordered for this vessel were approved by myself, and the vessel was inspected. After the starting of the vessel I made frequent visits here until I located a resident inspector, Mr. Atherholt, which was, I think, some time in September, 1902.

3. Q. Then I understand you to say that from the commencement of the construction of this vessel you were appointed by the Standard Oil Co. as the superintendent of its construction?

A. Yes, sir.

4. Q. On behalf of the Standard Oil Co. of New York?

A. Yes.

Objection. By Mr. Wm. C. Stuart, counsel for, etc.: We object to this line of examination, as far as it is an attempt by the action taken by the Standard Oil Company's representatives to show the construction of the contract as indicating the right of property or title to be in the Standard Oil Co., the said evidence being inadmissible as regards the creditors of the Wm. R. Trigg Co.

5. Q. As such superintendent you have full power, according to the contract, to reject or approve any materials or articles used in the construction or equipment of the said vessel, and at any stage of the work before final approval. To that end the Trigg Co. agrees that "full access to the work and full facilities for the inspection of same shall at all times be afforded to the said superintendent, surveyor, and their representatives." Please state what was done under that clause by you.

Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the same objection as to preceding question.

A. Before the work started on this vessel, before any material was ordered, I approved the different plans, and, through our company, appointed the Pittsburg Testing Laboratory to inspect all material at the mill, and we also had the material inspected at the Trigg Company's yard by Mr. Atherholt, the resident inspector for the Standard Oil Co.; also by Mr. J. G. Hunter. In a great many cases there was material rejected, plates, shapes, castings, and forgings, by the different inspectors, which was intended for the above vessel.

6. Q. In case of material ordered by the Wm. R. Trigg Co. especially for this vessel, will you please state how it was ordered, and whether you were consulted with respect to such orders?

A. Yes. I was always furnished with a duplicate copy of orders sent out by the Trigg Co.; these orders were always approved by me before orders were filled.

7. Q. How many of such orders, or copies, were transmitted to you?

A. Between 500 and 800.

8. Q. Have you any of them with you now?

A. Yes, sir.

9. Q. Please produce them, and file them with your deposition.

A. I herewith file a few copies, marked "Exhibit Standard Oil Co., No. 4."

Objection. Mr. Wm. C. Stuart, counsel for, etc., objects to this evidence as irrelevant and immaterial.

10. Q. Please state exactly what course you pursued when you received a copy of an order for material intended for this vessel?

Objection. Mr. Wm. C. Stuart, counsel for, etc., makes the same objection noted above.

A. These orders were always inspected by myself. If the orders were placed correctly, they were filed; otherwise, they were returned to the Trigg Co. to be rectified.

11. Q. Then the materials embraced in said orders were inspected—where?

A. At the different mills.

12. Q. Were they afterwards inspected at the yards of the Trigg Co.?

472 A. Yes; by Mr. Atherholt, the resident inspector, and also by Lloyd's surveyor.

Objection. Mr. Wm. C. Stuart, counsel for, etc., makes same objection noted above.

13. Q. How often did you visit the city of Richmond in your duty as superintendent of construction of this boat?

A. I used to visit here sometimes once a week, and sometimes it would be two weeks between my visits. I generally arranged to come here as often as once in two weeks.

14. Q. The contract provides for the payment on account of the price of this vessel of certain instalments, sometimes when the materials had been delivered on the ground, and others at various stages of the work; and further provides that such payments shall only be made upon the production of certificates from the superintendent and surveyor to the effect that the work of construction had progressed satisfactorily up to a point when such payments became due. Were any payments made by the Standard Oil Co. of New York under said contract? If so, were they made in accordance with the terms thereof, as referred to above, and upon certificates of yourself to the effect that the work of construction had progressed satisfactorily up to the point at which such payments became due?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel as stated, for the same reasons as given above, and as far as it is an attempt to show that the title to this property became *pari passu* the property of the Standard Oil Co. as the payments were made.

A. In regard to the payments, there were no payments made on this vessel without a certificate, signed by myself, sent to New York; and a great many of which were also signed by the resident inspector. When they drew on us for payment, I would first come to Richmond to ascertain whether the material was in the yard or the different parts of the vessel constructed to the point of completion when payment was called for.

15. Q. Was any payment made that was made by the Standard Oil Co. of New York until the work had been approved and accepted by you as superintendent of its construction?

473 Objection. Mr. Wm. C. Stuart, counsel for, etc., makes the same objection noted above.

A. No, sir.

Cross examination.

By Mr. Wm. C. Stuart, counsel as stated:

1 XQ. The materials which were ordered for this boat and for its construction from other subcontractors, who were claiming supply liens, were they ordered by the Standard Oil Co. or the Wm. R. Trigg Co.?

A. They were ordered by the Wm. R. Trigg Co., but approved by myself before such orders were placed.

2 XQ. Was the Standard Oil Co. in any way responsible to the subcontractors for this material?

A. Not to my knowledge.

By Mr. Eppa Hunton, counsel for etc.

1 XQ. Mr. Veit has testified that two oil pumps and a donkey ballast pump and certain other property were returned to the Standard Oil Co. by order of the court. Will you please state whether this property was shipped to the Wm. R. Trigg Co. and consigned to it?

A. Two oil pumps, one cargo pump, one ballast donkey, and a towing machine were purchased by the Standard Oil Co. and shipped to the Standard Oil Co. in care of the Wm. R. Trigg Co., Richmond, Va.

2 XQ. Is that all of the property that was so shipped?

A. It is all that I know of. That was purchased directly by the company.

By Mr. Wm. C. Stuart, counsel as stated:

3 XQ. And all other property was purchased direct from the subcontractors by the Wm. R. Trigg Co., was it not?

A. As far as I know.

Redirect examination.

By Mr. John Pickrell, counsel as stated:

1 Q. Please look at the vouchers for the several payments made by the Standard Oil Co. of New York under this contract, 474 filed with the deposition of Mr. Veit as "Standard Oil Co. of N. Y., No. 1," and say whether the signatures are genuine?

A. They are.

Further this deponent sayeth not.

Adjourned until Friday, December 18th, at 11 o'clock; same place.

S. H. HAWES & CO., PLAINTIFFS, }
v. }
WM. R. TRIGG CO. ET ALS., DEFENDANTS. }

OFFICE OF WILLIAM R. TRIGG COMPANY,
Richmond, Va., December 18th, 1903.

Met pursuant to adjournment.

Present: John Pickrell, Eppa Hunton, Thos. C. Gordon, J. J. Leake, all of whose appearances have been heretofore noted.

Mr. WM. G. ATHERHOLT, a witness on behalf of the Standard Oil Co., of New York, being duly sworn, deposes and says as follows, in answer to questions propounded:

By Mr. John Pickrell, counsel for the Standard Oil Company, of New York:

1. Q. Please give your name, age, residence, and occupation?

A. William G. Atherholt; age, 35; residence, 324 West Main st., Richmond, Va.; occupation, inspector of construction, Standard Oil Co. of New York.

2. Q. Have you had any connection with the building of the oil tank steamship "Lucas," otherwise known as Hull 19, by the Wm. R. Trigg Co. for the Standard Oil Co. of New York; if so, what was your connection, and when did it begin?

A. My connection with the "Lucas" began in August, 1902, when I came to Richmond several times in that month; and on September 1st I came to Richmond to remain here permanently until the vessel was completed. I remained here until June 15, 1903, when I was recalled to New York. I returned again on the "Lucas" November 15, 1903, and I have remained here ever since.

3. Q. What was the nature of your connection with the construction of the "Lucas?"

A. The nature of my connection was that I was stationed here as inspector, to inspect all material that went into the vessel, and the machinery of the "Lucas," to see that the work was properly carried out according to the plans and specifications, and to reject any material that was not suitable for the purpose, and to make reports to Mr. Veit as to the condition and quality of the work as it progressed. Then when the payments on this vessel were due, Mr. Ford, of Philadelphia, who was our superintending constructor, either wrote or wired me to know if the payments were due when requested by the Trigg Company. I immediately looked the matter over, and if the payment was due I either telegraphed or wrote him, at his request.

Objection. Mr. Eppa Hunton, counsel for, etc., notes the following objection: This line of examination is objected to, so far as it is an attempt by the action taken by the Standard Oil Company's representatives to show the construction of the contract as indicating the right of property or title to be in the Standard Oil Co., the said evidence being inadmissible as regards the creditors of the Wm. R. Trigg Co.

4. Q. Whom did you represent in performing the duties mentioned in your last answer?

A. I reported directly to Mr. Ford in Philadelphia, and copies of all letters and reports went to Mr. Veit, the head of the lighterage department of the Standard Oil Co.

3. Q. Then you were appointed by the Standard Oil Co. of New York to discharge the duties above mentioned?

A. Yes, sir.

6. Q. Are you familiar with the terms of the contract between the Standard Oil Co. of New York and the Wm. R. Trigg Co. for the construction of the "Lucas?"

A. Yes, sir.

7. Q. I see that this contract provides for a superintendent and surveyor, to be appointed by the Standard Oil Co., with full power to approve or reject any articles, at any stage of the work before final approval, and that the Trigg Co. agrees that "free
476 access to the work and full facilities for the inspection of same shall at all times be afforded to said superintendent, surveyor, and their representatives." State whether or not it was under that clause of the contract that you were stationed in Richmond on behalf of the Standard Oil Co. of New York, in charge of the construction of that vessel.

Exception. This question is excepted to by Mr. Eppa Hunton, counsel for, etc., so far as it is an attempt to prove the title to this property, the contract itself determining the rights of the parties.

A. Yes, sir.

8. Q. State, Mr. Atherholt, whether or not you inspected all material that went into the hull or the engines of the "Lucas" before same did actually go into them?

Objection. Mr. Eppa Hunton, counsel for, etc., makes the same objection noted above.

A. Yes, sir; I inspected all of the material that went into the hull after the material was fabricated or worked on, and while it was being worked on, so that the work could not be carried too far along before the defects could be seen; and on the engine work I inspected all the castings immediately when they came from the foundry, and the forgings from the smith shop, before they went into the machine shop to be worked on. If these castings and forgings were perfect or not defective, they were allowed to go on to the machine shop and the work carried on. Then I also inspected all the machinery, or rather, all the castings and forgings as the work progressed on the engines in the machine shop, so as to know if any defects developed during the work on this material. I also inspected all the material that went into the boat, even after it had been worked and placed on the boat, as to the quality of the work, to see if it was properly done.

9. Q. When material was ordered for this particular boat, and in pursuance of said orders delivered by the manufacturers at the Trigg Shipyards, did you or not inspect that material?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

477 A. Yes, sir; I inspected all material that came into the yard.

10. Q. Did you inspect the material mentioned on the inventory of the receiver, filed in this cause, as having been ordered by the Wm. R. Trigg Co. for this particular boat and assigned to it on its books?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Yes, sir.

11. Q. The contract, with the terms of which you say you are familiar, provides that payment shall be made at certain stages of completion of the vessel or delivery of the material, but provides that the payment shall be only upon the production of a certificate from the superintendent and surveyor to the effect that the work of construction has progressed satisfactorily up to the point at which such payments shall become due, and before final payment that the vessel and machinery are satisfactory in all respects. What did you do under that clause?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same objection above noted.

A. When the Trigg Company sent in a request for payment it was sent to Mr. Ford to be signed. Mr. Ford either sent the voucher to me, or wrote me to know if the payment was due, and I immediately looked into the matter and notified him if payment was due. In several cases the voucher was signed by me before it was sent to Mr. Ford and Mr. Veit, in order to save time, at the request of Mr. Myers; but there were no vouchers signed or any payments made unless the contract was carried out; when the vouchers were signed it was an evidence that the work up to that point was entirely satisfactory to me, and, as the representative of Mr. Ford and Mr. Veit, to them.

12. Q. Did Mr. Ford himself pay visits to the works to survey the progress that the construction of the vessel had reached after you were stationed here; if so, how often?

478 Objection. Mr. Eppa Hunton, counsel for, etc., notes the same objection as above.

A. I do not just remember, but I think he was here about every three or four weeks.

13. Q. Was any payment made by the Standard Oil Co. on account of this vessel until it was certified to by Mr. Ford and yourself, or by Mr. Ford, that the work had reached the particular stage named in the contract for such payment and was approved and accepted by you?

Objection. Mr. Eppa Hunton, counsel for, etc., makes the same objection noted above.

A. I can not answer previous to my coming here, but after my coming here there was not.

14. Q. Mr. Ford, to whom you have alluded in your answers, is the Mr. D. E. Ford who has testified in this cause?

A. Yes, sir.

15. Q. You have stated that you came here on behalf of the Standard Oil Co. permanently, that is to say, as a resident, on the 1st of September, 1902, and remained until June, 1903. During that time did you have any other occupation than that of supervising the construction of this vessel?

Objection. Mr. Eppa Hunton, counsel for, etc., makes the same objection.

A. No, sir.

16. Q. During that time, how often were you at the yards of the Wm. R. Trigg Co.?

Objection. Mr. Eppa Hunton, counsel for, etc., makes the same objection as above.

A. I was here every working day during the period that I was in Richmond.

17. Q. In the contract for the construction of this vessel the Trigg Company agrees to give your surveyor or inspector free access to the work and full facilities for the inspection of same. State whether or not the company complied with that provision of its contract so far as you are concerned.

479 Objection. Mr. Eppa Hunton, counsel for, etc., makes the same objection as above.

A. Yes, sir.

Cross examination

By Mr. Eppa Hunton, counsel as stated:

1. X Q. Mr. Veit testified that on one occasion payment was made before it was earned under the letter of the contract. This was with reference to certain material or machinery which the Wm. R. Trigg Co. had sublet to Cramps. He further testified that there was a special contract made with reference to the title to that material or machinery. Will you please state where that material or machinery now is, and by whom it is claimed?

A. The material, so far as I know, is in the Cramps' shipyard, Philadelphia, and I believe is claimed by the Standard Oil Co. I will say in regard to that payment that of course the material was all shipped to the Cramps' shipyard, and I did not inspect any of that material, because I was not in that neighborhood. The payment, of course, was not sent to me for approval, because I did not know anything about the contract at that time.

Further this deponent sayeth not.

Mr. L. T. MYERS, being duly sworn, deposes and says, in answer to questions propounded

By Mr. John Pickrell, counsel as stated:

1. Q. State your name, age, residence, and occupation.

A. Lilburn T. Myers; age, forty-six; residence, Richmond, Va.; occupation, up to December 23rd, 1902, vice-president, and at present receiver, of the William R. Trigg Co.

2. Q. Are you familiar with the contract made by the Wm. R. Trigg Co. with the Standard Oil Co. of New York, in respect to the construction of the steamship "Lucas" by the Wm. R. Trigg Co.?

A. Yes, sir.

3. Q. Who made that contract on behalf of your company?

A. I did.

4. Q. You heard the testimony of Mr. Veit as to the payments
480 made by the Standard Oil Co. on account of the construction of this vessel, namely, ten payments aggregating \$219,750.

For the sake of brevity, I will just ask you whether these payments were in fact made by the Standard Oil Co. in the manner and under the circumstances described by Mr. Veit in his testimony?

A. They were.

Exception. Mr. Eppa Hunton, counsel for, etc., notes the following: This line of examination, so far as it is an attempt by the action taken by the Wm. R. Trigg Company's representatives to show the construction of the contract as indicating the right of property or title to be in the Standard Oil Co., is excepted to, said evidence being inadmissible as regards the creditors of the Wm. R. Trigg Co.

5. Q. Were any of these payments made before the inspectors of the Standard Oil Co. had certified that the work had reached the stage at which, under the contract, payment became due and the work to that point was satisfactory to the said inspectors?

Exception. Mr. Eppa Hunton, counsel for, etc., notes the same exception as above.

A. The certificate of the inspectors was required in every case, with the possible exception of one payment, which was made upon the arrival of the boiler material in the yards of Wm. Cramp & Sons, Philadelphia. I am not aware whether inspection of that material was made before the payment was allowed or not.

6. Q. With regard to the payment that, according to the terms of the contract, became due "when boiler material arrives in yard," please state the facts.

A. At the time that I was notified by the Cramps that the material for the boilers had arrived in their yard, I addressed a letter to Mr. Veit, asking that the contract be broadly construed so as to treat the arrival of the boiler material in Cramp's yard as meeting the spirit of the contract requirement that a payment should be made when the boiler material arrived in the yard of the Wm. R. Trigg Co. Mr. Veit replied that upon the advice of counsel he could not allow the payment unless we either transferred the contract between the Wm. R.

Trigg Co. and the Cramps to the Standard Oil Co.; or, if that
481 could not be done, that I give the Standard Oil Co. a letter to the Cramps stating that the boilers were building for the account of the Standard Oil Co., and that any payments made to them by the Trigg Co. were for the account of the Standard Oil Co.; and, further, that the ownership in the boilers was to vest in the Standard Oil Co. to the extent of such payments as might be made. At the same time Mr. Veit forwarded a check for \$12,000 on account. Accordingly, I forwarded to Mr. Veit a letter addressed to the Cramps and also sent a copy of the letter to the Cramps direct. The letter was to the following effect:

"RICHMOND, VA., Oct. 16, 1902.

WM. CRAMP & SONS SHIP & ENGINE BUILDING CO.,

Philadelphia, Pa.

DEAR SIRS: This is to certify that the boilers which you are building for this company, under contract dated April 30th, 1902, are for the Standard Oil Co. of New York. Any payments made to you by

this company are for the account of the Standard Oil Co. of New York, and the ownership of the boilers is to vest in that company to the extent of any payments made to you by us.

Yours, very truly,

WILLIAM R. TRIGG COMPANY,
LILBURN T. MYERS, *Vice-President.*"

After this letter had been filed with the Cramps Mr. Veit remitted \$9,975. being the balance of the payment due upon the arrival of the boiler material in the yard.

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above; and also because it is irrelevant and immaterial.

7. Q. Then I understand that the Trigg Co. sublet the contract for the construction of the boilers for the oil tank steamship "Lucas" to the Cramps, of Philadelphia, and that upon the arrival of boiler material in the yard of the Cramps, of Philadelphia, instead of as contemplated by the contract of the Trigg Co. with the Standard Oil Co., at the yards of the Trigg Co., application was made by you to the Standard Oil Co. for payment of the instalment due
482 "when boiler material arrives in yard," and that thereupon

Mr. Veit, upon the advice of counsel, refused to make the payment until your company had certified to the Cramps that the boilers, to the extent paid for, should thereby become the property of the Standard Oil Co. of New York, and the Cramps had assented thereto, and that your company afterwards did give this certificate, and then the balance of the payment was made. Now, why was this course pursued?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. In order that we might get the payment, as under our contract with the Cramps a partial payment had to be made to them upon the arrival of the boiler material in their yard.

8. Q. That was your motive, no doubt, to get the money; but why was it that the Standard Oil Co. insisted in advance that it should be recognized both by you and by Cramps that as to the boilers being constructed by the Cramps the title to them should vest in the Standard Oil Co. of New York as fast as paid for, and that you assented thereto?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above; and also because the witness cannot possibly know or testify as to what animated the Standard Oil Co.

A. I am not prepared to say what was the motive of the Standard Oil Co., beyond those given in their letter to me, to which I have already alluded. My request to the Standard Oil Co. was that the arrival of the boiler material in Cramps' shipyard should be considered as tantamount to the arrival of the material here; and I gave the certificate with the idea of placing the Standard Oil Co. in the same position with regard to the material in Cramps' shipyard as with regard to its arrival here.

Exception. This answer is excepted to by Mr. Eppa Hunton, counsel for, etc., so far as the witness endeavors to construe the contract between the Wm. R. Trigg Co. and the Standard Oil Co. and to compare it with the contract between the Wm. R. Trigg Co. and the Cramps; the contracts speak for themselves.

483 Counsel for the Standard Oil Co. replies that there is no question here about the contract with the Cramps people, because the payment was not made until the certificate was given and assented to by the Cramps; and furthermore, that this incident shows not merely the opinion of the parties to this contract as to its true construction, but the practical construction they both put upon it in carrying it out.

9 Q. With the third exhibit with the deposition of Mr. Veit was filed some correspondence relative to the matter mentioned in your last answer. I herewith hand you, taken from the files of the Wm. R. Trigg Co., certain letters and copies of letters relating to the same matter of payments. Please examine them and say what they are, and whether they are genuine, and what they purport to be; and if so, file them as your answer to this question.

A. The letters in question, which I file herewith, are true copies of the letters written by the Wm. R. Trigg Co., and the letters received by the Wm. R. Trigg Co. are the originals, and they relate to the subject of the payment on account of the boiler material. They are all attached in one parcel, and I herewith file them, marked "Standard Oil Co. No. 5."

10 Q. Did the Wm. R. Trigg Co. take out any insurance upon the oil tank steamship "Lucas" and the material ordered for it?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Yes, sir.

11 Q. For whose benefit was the said insurance taken out?

A. For the benefit of the Wm. R. Trigg Co., the Standard Oil Co., and *or* the Virginia Trust Co., as their interests might appear. The insertion of the name of the Virginia Trust Co. in the policy was an error of the insurance agent.

Objection. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above, and also because it is not the best evidence; the policies themselves are the best evidence.

12 Q. Did the Wm. R. Trigg Co. give in for taxation the hull of the "Lucas," or its engines, or the material assigned upon the books of the Trigg Co. to this vessel?

484 Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. No, sir.

13 Q. When you ordered any material intended for this vessel did you send a duplicate of the order to the Standard Oil Co. before the same was filled?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Yes, sir.

14 Q. At the time of the appointment of the receiver in this cause, this vessel, so far as completed, consisted of the hull, known as Hull 19, and of the machinery in process of construction intended therefor, and there were in addition certain frames, plates, and other material which are described on your inventory filed with the papers in this cause as intended for this vessel or as ordered for it. Was this material in fact ordered especially for this vessel?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Yes, sir.

15 Q. Does it so appear upon the books of the Wm. R. Trigg Co., as set apart for this vessel?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Yes, sir.

16 Q. You were present at the taking of the depositions of Mr. Veit, Mr. D. E. Ford, and Mr. Atherholt and heard their testimony with respect to inspection of the work as it progressed and the material before and after it was delivered at the yard, were you not?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Yes, sir.

485 17. Q. Do these depositions correctly state the facts with respect to these matters?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Yes, sir.

18. Q. You have stated that you, as vice-president, made this contract with the Standard Oil Co. on behalf of the Wm. R. Trigg Co. In the course of carrying out that contract for the construction of this vessel up to the time of the appointment of the receiver, did you have any intercourse or interviews with the Standard Oil Co. of New York with respect to this contract?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above; and also because these interviews would be mere hearsay, and could not be considered in the interpretation of the written contract, which speaks for itself.

A. Yes, sir.

19. Q. Was this intercourse, or these interviews, frequent and constant?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above.

A. Comparatively so. I do not recall the dates, but practically all of the business which I conducted with the Standard Oil Co. in the matter was with Mr. Veit.

20. Q. In this intercourse that you had with Mr. Veit while the vessel was under construction, what was your idea and position with respect to the ownership of the vessel under the contract?

Exception. Mr. Eppa Hunton, counsel for, etc., makes the same exception noted above; also because the contract speaks for itself, and the ideas of the witness, however valuable, cannot control the terms of the contract or title to this property.

A. I supposed that the vessel was the property of the Standard Oil Co. to the extent of any payments made.

486 Cross-examination.

By Mr. Eppa Hunton, counsel as stated:

1. XQ. Did the Standard Oil Co. give in the "Lucas" for taxation?

A. I do not know.

2. XQ. Mr. Veit in his testimony the other day testified that he had had a conversation with you about ownership, the title to the "Lucas," but that he could not say whether this conversation, or these conversations, were prior to or subsequent to the appointment of the receiver. Did you ever have any interview with Mr. Veit upon the ownership of this vessel or the title thereto prior to the appointment of the receiver in this cause?

A. I do not recollect.

3. XQ. Be kind enough to reflect and answer, if you can, whether any such conversation took place between you prior to the appointment of the receiver.

A. I am quite sure that no such conversation took place prior to the appointment of the receiver, for the reason that the suggestion which was made after the appointment of the receiver that the vessels building by the company were assets of the Trigg Company was a new one to my mind. No doubt had ever arisen in my mind upon that point prior to the appointment of the receiver; indeed, I may say that the question never occurred to me.

Exception. Mr. Eppa Hunton, counsel for, etc., excepts to this answer, so far as it expresses the opinion of the witness.

4. XQ. Had your mind ever been directed to the question of ownership or title until after the failure of the Wm. R. Trigg Co.?

A. No, sir.

Redirect examination.

By Mr. John Pickrell, counsel as stated:

1. Q. You have testified that you made this contract on behalf of your company; what was always the construction that you put upon it as to the passing of the title?

Exception. Mr. Eppa Hunton, counsel for, etc., excepts to
487 this question because the witness' idea of the construction of the contract throws no light upon it, and the witness has already testified that his mind had never been directed to the question of ownership or title until after the failure of the Wm. R. Trigg Co.

A. I am not conscious of having debated the subject in my mind in any way, although I had the impression that in receiving payments the company was giving a quid pro quo in the delivery of the

goods; in other words, I looked upon it as a simple question of purchase and sale, so much a matter of custom as to require no mental process on my part.

Exception. Mr. Eppa Hunton, counsel for, etc., excepts to this answer, so far as it states the impression of the witness, and for the same reasons the question is also excepted to.

Recross-examination.

By Mr. Eppa Hunton, counsel as stated:

1. XXQ. Did you ever think about this matter at all, or have any occasion to think about it, or did you ever consider the ownership or title of this vessel in any way, or have any views about it, until after the failure of the company?

A. No, sir; except that I am now reminded that at the time the policies were written I understood by the mention of the Standard Oil Co. as beneficiary that it was interested to the extent of such payments as it had made.

Exception. Mr. Eppa Hunton, counsel for, etc., excepts to this answer, so far as the witness gives his understanding.

2. XXQ. If that theory is correct, why was the Wm. R. Trigg Co. mentioned in this insurance policy?

A. For the reason that the value of the work on the vessel was always in excess of the payments made.

Further this deponent sayeth not.

Mr. ROBERT LEE TAYLOR, being duly sworn, deposes and says as follows, in answer to questions propounded

By Mr. John Pickrell, counsel as stated:

488 1. Q. Please state your name, age, residence, and occupation?

A. Robert Lee Traylor; age, thirty-nine; residence, 803 East Marshall st., Richmond, Va.; engaged in the insurance business, associated with Davenport & Co., at 1113 East Main st., Richmond, Va.

2. Q. State whether you or the firm of Davenport & Co., with which you are connected, were the insurance agent through whom the Wm. R. Trigg Co. took out certain policies of insurance upon the Standard Oil tank steamship "Lucas" in process of construction by the W. R. Trigg Co.; and if so, please produce and file the policies in question as a part of this, your answer.

Exception. Mr. Eppa Hunton, counsel for, etc., excepts to this question so far as it is an attempt to show the construction of the contract as indicating the right of property or title to be in the Standard Oil Co., said evidence being inadmissible, irrelevant, and immaterial.

A. In February, 1902, I was engaged in business on my own account and was the broker for the care of *al* the insurance of the Wm. R. Trigg Co. The policies now filed, bearing date February 10th, 1902, and expiring February 10th, 1903, were procured by me on an order of the Wm. R. Trigg Co.

These policies, four in number, are now filed, marked "Standard Oil Co., Nos. 6, 7, 8, and 9."

Further this deponent sayeth not.

Adjourned to

Depositions relating to contract for construction of tugboats "Bristol," "Chester," and "Cape Charles," filed with Commissioner Eugene C. Massie's report No. 4, filed in clerk's office July 19th, 1906.

489 S. H. HAWES & Co., plaintiffs, }
v. }
WM. R. TRIGG CO. ET ALS., defendants. }

OFFICE OF WILLIAM R. TRIGG COMPANY,
Richmond, Va., October 13th, 1903.

Met pursuant to adjournment.

Present: Francis L. Smith, counsel for the Pennsylvania Railroad Co. and the New York, Philadelphia & Norfolk Railroad Co.; Floyd Hughes, Wm. C. Stuart, E. Randolph Williams, A. W. Patterson, Thos. C. Gordon, Geo. L. Christian, John P. Leary, J. J. Leake, L. T. Myers, receiver, all of whose appearances have been heretofore noted.

Mr. SAMUEL PORCHER, a witness on behalf of the Pennsylvania Railroad Co., being duly sworn, deposes and says as follows, in answer to questions propounded:

By Mr. F. L. Smith, counsel as stated:

1 Q. Will you state, if you please, your name, place of residence and occupation?

A. My name is Samuel Porcher; I live in Philadelphia, Pa.; and I am assistant purchasing agent of the Pennsylvania Railroad Company.

2 Q. Have you any knowledge of a contract between the Wm. R. Trigg Co. and the Pennsylvania Railroad Co. for the construction of two tugboats?

A. Yes, sir.

3 Q. Is that contract in writing?

A. It is in writing.

4 Q. Have you the original instrument with you?

A. Yes, sir.

5 Q. Will you please produce it, and file it with this your deposition, to be marked "S. P. No. 1"?

Witness produces and files the above contract, marked "S. P. No. 1."

Objection. Mr. Wm. C. Stuart, on behalf of all the creditors in this suit represented by Bickford & Stuart, and also on behalf
490 of the defendants in the C. C. Knight & Co. petition, represented by Mr. George Bryan, makes the following objections:

We object to the introduction of the contract between the Pennsylvania Railroad Co. and the Wm. R. Trigg Co. in so far as its contents affect the interests of said creditors in any way; and especially does this objection apply to any provision thereof whereby any lien is reserved, or right of title, or claim of property in and to the subject matter of said contract, these creditors being third parties without notice, either actual or constructive, of the contents of said contract, or of any of its provisions.

6. Q. This original contract appears to have been signed by the Pennsylvania Railroad Co. by Samuel Porcher, assistant purchasing agent. Did you sign this contract?

A. Yes, sir.

7. Q. It appears to have been signed by the Wm. R. Trigg Co. by Lilburn T. Myers, vice-president. Are you aware of the fact that Mr. Myers signed this contract in that capacity?

A. Yes, sir; I believe so.

8. Q. Have any payments been made under this contract; and if so, have you with you the original vouchers or checks by which those payments were made?

A. Yes, sir; payments have been made, and I have the receipted vouchers.

9. Q. Can you state the extent of those payments, and in what amounts they were made?

A. \$60,000.00, in ten equal instalments of \$6,000.00 each.

10. Q. Will you produce the original vouchers through which these payments were made, and file them with your deposition, to be marked, respectively, Exhibits S. P., No. 2, No. 3, No. 4, No. 5, No. 6, and No. 7.

A. I would like to keep these originals in the railroad office and file copies, if counsel has no objection.

By the Commissioner: It is agreed that copies of these vouchers, verified by the commissioner, shall be filed in place of the originals, it being understood that the originals can be produced at any time it may be desired by the court.

11. Q. Can you testify as to the dates when these several vouchers were transmitted to the Wm. R. Trigg Co.?

491 A. I do not think I can say exactly the dates when they were transmitted.

12. Q. Each shows upon its face the date the Wm. R. Trigg Co. had its signature appended to the bottom of the voucher?

A. Five do; one does not.

13. Q. The dates when they were respectively transmitted by the Pennsylvania Railroad Co. to the Wm. R. Trigg Co. would be antecedent to the dates of the receipt at the bottom of the vouchers?

A. Yes, sir.

14. Q. Have you in your possession any correspondence growing out of the execution of this contract? If so, you will please produce it and file the same with your deposition, marked "Exhibit S. P. No. 8."

Objection. Introduction of the correspondence objected to by Mr. Wm. C. Stuart, on behalf of the creditors mentioned, and for the benefit of other creditors who wish to take advantage of the objection, for the reason that, so far as their claims are concerned, any correspondence relative to this contract between the Wm. R. Trigg Co. and the Pennsylvania Railroad Co. is immaterial, irrelevant, and inadmissible, in so far as it purports to construe any of the provisions thereof.

Cross-examination.

By Mr. A. W. Patterson, counsel as stated:

1. X Q. Does the correspondence filed purport to be the entire correspondence on this subject?

A. The entire correspondence that passed between us and the Wm. R. Trigg Co.? No.

2. X Q. What was it intended to have reference to—these liens filed?

A. I think only to this case.

3. X Q. Is that all the correspondence bearing upon this case that passed between the two?

A. So far as I know, it is.

By Mr. Wm. C. Stuart, counsel as stated:

1. X Q. I see by provision 8 of this contract that it is provided that the party of the first part, the Wm. R. Trigg Co., shall furnish to your company, under seal, releases from all the mechanics and material men, all liens, claims, and demands for materials
492 furnished and provided, and work and labor done. Were these releases furnished in the case of this contract?

A. I do not think so.

2. X Q. Did you ever request the Wm. R. Trigg Co. to furnish you with any such releases?

A. I did not.

3. X Q. Did your company?

A. Not that I know of.

By Mr. E. Randolph Williams, counsel as stated:

1. X Q. It appears by the eleventh clause of this contract, and in fact the party of the first part agrees to insure the structure against loss or damage by fire, water, or accident in favor of the party of the second part to an amount equal to that advanced by the party of the second part in partial payments. Was there any such contract of insurance effected, to your knowledge?

A. We asked Mr. Myers to insure the structures as usual, and I understood that he would do so.

2. X Q. You do not know whether your company has received any such policy, or know of any having been made in its interest?

A. No, sir.

Further this deponent sayeth not.

FRANCIS L. DU BOSQUE, a witness on behalf of the Pennsylvania Railroad Company, being duly sworn, deposes and says as follows in answer to questions propounded:

By Mr. Francis L. Smith, counsel as stated:

1. Q. State, if you please, your name, place of residence, and occupation.

A. My name is Francis L. Du Bosque; residence, South Orange, New Jersey. I am assistant engineer floating equipment Pennsylvania Railroad Company.

2. Q. Who was the representative of the Pennsylvania Railroad Company designated to perform the functions described in the third article of the contract between the Pennsylvania Railroad Co. and the Wm. R. Trigg Co.? It says, "this representative shall have access to the works of the party of the first part, or the works of the parties who are furnishing material for said tugboats, at any and all reasonable times during the construction of said boats, with full right and privilege to inspect the workmanship and all material used in the construction of each and all of said boats and with full right to condemn and reject if found inadequate or defective."

A. In accordance with the sixth article of the contract, I was delegated a representative of the company in fulfilling the conditions of the third article.

3. Q. I wish you would state in detail, and in narrative form, exactly what you did in the performance of the duties thus assigned you.

A. The Pennsylvania Railroad Co. in having equipment built for it, prepares plans and specifications in considerable detail, which are submitted to the shipbuilding concerns for competitive bids. These plans and specifications are prepared by me and my assistants. On placing of the contract, which is done by the purchasing department of our company, we, as before stated, are delegated to confer with the contractors in the elaboration and working up of the detailed plans necessary to order material to build these boats. On the receipt of the material in the yard we make periodical visits to inspect its quality and workmanship. We confer with the designing department of the contractors as to how the minor details shall be arranged, such as the riveting work and construction of miscellaneous foundations for various parts of the equipment. The work being now well under way, we continue our visits and inspect the workmanship as it proceeds in the various shops and as it is erected on the boats. It is our duty to see that this workmanship is in accordance with the standards which are set forth in quite considerable detail in the specifications, and to reject any material which does not come up to these standards.

4. Q. Who prepared, or had prepared, the specifications for the two tugboats provided for in the contract heretofore mentioned?

A. We did.

5. Q. When you say "we," do I understand it was done by you and your assistants?

A. These plans were prepared by myself and my assistants.

6. Q. Did you not visit the city of Richmond during the construction of these boats, as far as they had progressed?

494 A. I visited Richmond, possibly, once in two weeks, on an average; sometimes at more frequent intervals, as the condition of the work demanded.

7. Q. What did you do when you came to Richmond?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., who states that it is here understood that all questions and answers along this line are objected to on behalf of the same parties, on the ground of their immateriality and as being inadmissible as extrinsic evidence introduced for the purpose of construing a contract which is unambiguous.

A. I followed the course of consultation and examination, as outlined in my answer to the second question.

8. Q. Did you not visit the yards of the Wm. R. Trigg Co.?

A. Yes, sir.

9. Q. Did you not inspect the materials employed in the construction of these tugboats and the workmanship about the same?

A. Yes.

10. Q. Under whose certificate were the partial payments made for these boats that have been testified to by Mr. Porcher?

A. The practice of our company is for the party immediately in charge of the work to certify to its correctness. The certificate is afterwards signed by various parties, depending on the department to which it relates. In the case of the Wm. R. Trigg contract, I certified originally to the payments.

Objection. Question and answer objected to by Mr. Wm. C. Stuart, counsel for, etc., for the same reason as above, so far as it states the practice of the Pennsylvania Railroad Co., to be different from that provided for in the contract.

11. Q. I understand, then, Mr. Du Bosque, that upon your giving the original information and certificate these partial payments, testified to by Mr. Porcher, were made?

A. The payments were made on this certification, and would not have been made without them.

Objection. Question and answer objected to by Mr. Wm. C. Stuart for the same reason as above, and also for the reason that the witness has not shown that he was the party authorized by the contract to make the certificate.

495 12. Q. Will you please make this matter plain? You have testified that you were the officer designated to perform the duties specified in the third clause of the contract, and that you did visit Richmond and make the inspection therein provided for. After that was done, then what was the next thing that you would do?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., for the same reason as above, and because it is leading.

A. The contract provides that the supervision of this work shall be under the direction of the general superintendent of motive power or his authorized representative, and by correspondence the general superintendent of motive power authorized me to assume these duties.

Objection. Mr. Wm. C. Stuart, counsel for, etc., makes the same objection as above, on the same grounds, and further, that it is stating what the contract provides, which speaks for itself.

13 Q. You, having been designated to perform these duties, gave the first information, or the first certificate, or the first data, upon which could be based the issuance of a voucher or check for the payment of the work so far done?

A. I did.

14 Q. Please look at the papers now handed you, bearing these numbers: 5020, 10620, 11320, 12320, 13220, 14730, and 15820, to be filed with your deposition, and to be marked "F. L. Du B. No. 1," and state what these papers are, and how they came in your possession.

Objection. By Mr. Wm. C. Stuart, counsel for, etc.: We object to the introduction of these, as far as they affect the interest of the creditors whom we represent, and inasmuch as they are entirely immaterial.

A. The papers handed me are copies of orders of the Wm. 496 R. Trigg Co. issued for materials to be used in the construction of the two tugboats. The Wm. R. Trigg Co. furnished us these orders so as to keep us advised where their orders for material were placed, so that we could, if we desired, inspect material at the works of the manufacturer, or object to the quality or dimensions of the material as called for in the order.

15 Q. You have spoken of them as being copies; nothing appears upon the face to indicate that they are copies. Are they copies or duplicate originals?

A. We believe them to be duplicates of the original copies. They are signed by the vice-president of the company.

Objection. By Mr. Wm. C. Stuart, counsel for, etc.: We object to the introduction of them as either copies or originals, as the witness has not stated that they are either.

16 Q. The name of Lilburn T. Myers, vice-president, appears to be signed to these several papers. Do you know whether or not that is a genuine signature of Mr. Myers?

A. I do not.

17 Q. I understand you to say that the course of business was that the Wm. R. Trigg Co. in ordering supplies or material intended to be embodied in the construction of these tugboats, sent to the Pennsylvania Railroad Co. either a copy or a duplicate original of the order given to the party from whom the goods were ordered?

A. Yes, sir.

18 Q. And that these papers designated as "Exhibits F. L. D. 1" are documents of that character?

A. They are.

Objection. Question and answer objected to by Mr. Wm. C. Stuart, counsel for, etc., for the same reasons noted above.

19 Q. Was that the general course pursued with respect to all the material ordered for these two tugboats?

A. I believe we have copies of most of the orders for material for these boats.

20 Q. Are those that you have not produced similar to those that are?

A. In general form they are similar.

497 Cross-examination.

By Mr. E. Randolph Williams, counsel as stated:

1 XQ. Under the terms of the contract, all the material put into these boats was subject to your approval; and these orders were sent you to expedite, and possibly save you a trip to Richmond, to enable you to see it at these, or the Bethlehem Works, or any works at which these parts were being made?

A. Yes, sir. If I may correct my answer, I would say that that was one purpose of sending us the orders.

2 XQ. Your failure to approve work in process did not prevent you from rejecting the work when completed?

A. We assume that the approval of certain parts of the boat during construction meant its acceptance.

3 XQ. I ask you the converse of that question: The failure to approve the process, prevented your objecting to it when completed?

A. I can only say that our payment by voucher for our own property assumes its acceptance.

4 XQ. You do not catch my question: These orders were sent you to show that certain material was in process of manufacture at a certain plant or plants, and it was your option to visit that plant and approve the work in process or upon completion. If you had not visited the plant and approved the work in process, would that have prevented you from rejecting the work when delivered at the Wm. R. Trigg Company's yards for not being up to specifications or standard?

A. No, sir.

By Mr. Wm. C. Stuart, counsel, etc.:

1 XQ. As I understand it, you were the authorized representative, under section six of the contract, of the superintendent of motive power, for the purpose of acting under the provisions of article three. Is that correct?

A. It is correct.

2 XQ. Upon whose certificates were the payments made by the Pennsylvania Railroad Co.?

A. Upon mine.

3 XQ. Did you exercise any other function under this contract, except the one you have just mentioned?

A. Make your question plainer.

498 4 XQ. Did you act for the Pennsylvania Railroad Co. in any other capacity except in the one mentioned, as a representative of the superintendent of motive power, carrying out the provision No. 3?

A. Yes, sir.

5 XQ. In what other capacity?

A. I have already testified that I consulted and approved of the working drawings prepared in connection with these boats, and that I certified to the correctness of bills.

6 XQ. You were the representative of the company for the purpose of enforcing the provisions of this contract, and carrying out its rights under this contract?

A. No; not entirely.

7 XQ. Will you state, then, what portions of the contract you, as a representative of the Pennsylvania Railroad Company, had nothing to do with?

Question withdrawn.

8 XQ. Who had charge of seeing that provision No. 8 of this contract was carried out?

A. I understand the assistant purchasing agent, who signed the contract.

9 XQ. You had nothing to do with that provision?

A. No, sir.

10 XQ. As each portion of the work under the contract was completed, did your company ever receive any release of liens from supply men, or did they ever ask for such release from the Wm. R. Trigg Co.?

A. I had nothing to do with that part of the contract.

11 XQ. You do not know as to this, then?

A. I do not.

Reexamination.

By Mr. Francis L. Smith, counsel as stated:

1 Q. I understand that, so far as the provisions of article 8 of the contract are concerned, you had nothing to do with it?

A. I had nothing to do with it.

2 Q. In respect to your duties under article 6, did you not visit Richmond periodically, go into the works of the Wm. R. Trigg Co., and inspect and pass upon materials embodied in and the workmanship of these two tugboats?

499 A. I have previously so testified.

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., for the reason that it is immaterial and leading.

3 Q. Were there or not assembled at the works of the Wm. R. Trigg Co. certain material and parts not actually embodied up to this time in the construction of the tugboats?

A. Yes, sir.

4 Q. Can you not say whether some of those parts had been actually fitted to and adjusted to those tugboats, and removed?

A. Some parts have been fitted to the boats and removed until the proper time comes to erect them.

Objection. Question and answer objected to by Mr. Wm. C. Stuart on the ground that the same is immaterial and leading.

5 Q. Can you say whether or not a correct inventory of those parts and materials so assembled is embodied in the pamphlet prepared by Mr. Myers, receiver in this cause, and used when the boats were sold?

A. To my best knowledge and belief, the inventory is correct.

6 Q. Did you not yourself prior to that time make an inspection of those parts and list them?

A. I made an inspection and a casual list, not quite so full as given in the inventory of the receiver.

Objection. Question and answer objected to by Mr. Wm. C. Stuart, counsel for, etc., as immaterial and leading. No objection is made to the above questions because they were not asked on the direct examination.

Further this deponent sayeth not.

Mr. L. T. MYERS recalled for examination:

By Mr. F. L. Smith, counsel as stated:

1 Q. Were you one of the officers of the Wm. R. Trigg Co., and if so, please state what position you filled?

500 I was vice-president.

2 Q. Look at the original contract between your company and the Pennsylvania Railroad Co. and say if that is your genuine signature signed to said contract.

A. It is.

3 Q. Do you recognize the signature of Mr. Porcher, also, as signed on behalf of the Pennsylvania Railroad Co.?

A. Yes.

4 Q. Were any payments made by the Pennsylvania Railroad Co. to the Wm. R. Trigg Co. during the progress of the construction of these boats?

A. Yes.

5 Q. Can you give the dates and amounts?

A. There were six instalments of \$10,000 each as follows: Sept. 12, 1902, \$10,000; Oct. 10, 1902, \$10,000; Oct. 29, 1902, \$10,000; Nov. 11, 1902, \$10,000; Nov. 20, 1902, \$10,000; Dec. 16, 1902, \$10,000.

6 Q. There was a contract also entered into with the New York, Philadelphia & Norfolk Railroad Co. for the construction of a tug-boat, was there not?

A. Yes.

7 Q. Was it entered into in duplicate, or two parts?

A. Yes.

8 Q. Have you in your possession the duplicate original delivered to you at the time of the execution of the agreement?

A. Yes, sir.

9 Q. Will you produce and file it with your deposition?

Objection. Mr. Wm. C. Stuart, counsel for, etc., here states: We wish to note the same objection to the introduction of this duplicate or copy as we made in the case of the contract with the Pennsylvania Railroad Co., and in the same form.

10 Q. Has any payment been made by the N. Y. P. & N. Railroad Co. to the Wm. R. Trigg Co., on account of the construction of that boat?

A. Yes.

11 Q. How much?

A. \$12,000.

12 Q. Can you give the date of that payment?

A. It was on October 23rd, 1902.

501 13 Q. At the time that these contracts were entered into and during the progress of the work upon them, who was the active executive officer of the Wm. R. Trigg Co.?

A. I was.

14 Q. Was it under your direction and supervision or orders that the work was done upon these boats?

A. It was.

15 Q. Will you look, if you please, at the papers which were filed with the deposition of Mr. F. L. Du Bosque, designated as "Exhibits F. L. D. No. 1," and say what they are and the course of business in which they were issued or sent out?

A. They are duplicates of the orders for material for the Pennsylvania Railroad tugs.

16 Q. Those, I understand, are duplicate orders of material intended to be embodied in the Pennsylvania Railroad tugs hulls Nos. 20 and 21?

A. Yes.

17 Q. To whom was each copy of the duplicate order sent?

Objection. Question and answer objected to by Mr. Wm. C. Stuart, counsel for, etc., as immaterial.

A. I do not recall that any duplicates were furnished. The usual custom was to send the order to the concern from which the material was to be purchased, and to keep a copy on file.

18 Q. Can you not say whether it was the custom for one copy of the duplicate to be sent to the person from whom the goods or materials were ordered, and the other copy sent to the proper department of the Pennsylvania Railroad Co.?

A. That was a detail which was attended to by my assistant, and there may have been an understanding between the officers of the Pennsylvania Railroad and himself as to sending them a copy of the order for mutual convenience.

19 Q. These papers convey upon their face information to the parties from whom the goods were ordered that they were going to be embodied in the Pennsylvania Railroad Company's tugs?

A. Yes.

20 Q. During the progress of the work upon these vessels, Mr. Myers, were they or not ever returned for the purpose of State or city taxation, as the property of the Wm. R. Trigg Co.?

A. No, sir.

502 Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the same objection as above.

20 Q. Why was that, Mr. Myers?

Objection. Question objected to by Mr. E. Randolph William, counsel for, etc., on the ground that the returns of the Wm. R. Trigg Co. for taxation, both State and city, are submitted in writing by that company and are of record and accessible, and can be produced in evidence.

22 Q. Why, Mr. Myers, were they not so returned for the purpose of taxation as the property of the Wm. R. Trigg Co.?

A. Because I did not understand that I was required by law to return them.

23 Q. Was it not because you did not treat and understand them as being the property of the Wm. R. Trigg Co.?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., because the contract between the Pennsylvania Railroad Co. and the Wm. R. Trigg Co. is the best evidence as to whose property these vessels are; and because it calls for a construction by the witness of the terms of that contract; and because, further, the creditors of the Wm. R. Trigg Co. had no notice of the provisions of this contract.

By Mr. E. Randolph William: And further, that it does not appear that these boats, or any material intended for them, were in the possession of the Wm. R. Trigg Co., or their property, prior to any tax return which it has been shown was made by the Wm. R. Trigg Co.

By Mr. Wm. C. Stuart: And further, because it is immaterial to the creditors of the Wm. R. Trigg Co. whether the Wm. R. Trigg Co. considered this property to be theirs or not.

A. I can only add to my first answer the statement that it did not occur to me that they should be returned for taxation.

24 Q. You have testified, Mr. Myers, that when this contract was executed and during the progress of work on these boats that you were the executive and administrative officer of the Wm. R. Trigg Co. I will ask you whether during the progress of this work you treated and regarded these vessels, Hulls Nos. 20 and 21, as
503 being the property of the Wm. R. Trigg Co. or the Pennsylvania Railroad Co.?

Objections. Question objected to by Mr. E. Randolph Williams, counsel as stated, on the ground that the contract is plain and unambiguous, and that the question calls for an interpretation from Mr. Myers of this contract.

By Mr. William C. Stuart, counsel for, etc.: And because it is immaterial to the creditors whether the William R. Trigg Co. treated the property as that of the Pennsylvania Railroad Company or not.

A. I considered and understood the vessels to be the property of the Pennsylvania Railroad Co. to the extent of their payments thereon.

25 Q. Was this the same with respect to the boat to be called the "Cape Charles," to be constructed for the New York, Philadelphia & Norfolk Railroad Co.?

Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the same objection as to preceding question.

A. Yes.

Objection. Both answers objected to by Mr. Wm. C. Stuart, counsel for, etc., as giving the witness' construction of the contract, which is incompetent.

26 Q. Will you state, if you please, the condition of the affairs of the Wm. R. Trigg Co. at the time of the appointment of yourself as receiver in this cause, with respect to the assembling and appropriation of certain property, parts, and material intended to be embodied in the construction of these several tugboats?

Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the same objection as above.

A. At the time of the appointment of the receiver, Hull No. 20 was about seventy per cent complete, Hull No. 21 about sixty per cent complete, and Hull No. 22 about thirty per cent complete, according to our estimates. This estimate of completion included material and supplies purchased for the construction of the vessels, although not actually assembled in the structures. A correct inventory of hulls 20, 21, and 22 is contained in proceedings in this cause.

Objection. Mr. Wm. C. Stuart, counsel for, etc., notes objection, so far as the inventory is introduced in attempt to show assembling by the receiver of the various parts of the particular vessels being built for the Pennsylvania Railroad Co. or the New York, Philadelphia & Norfolk Railroad Co., to prove that the property was the property of the said Pennsylvania Railroad Co. or the New York, Philadelphia & Norfolk Railroad Co., or that by so assembling said parts in separate groups the receiver so construed the property.

Recross-examination.

By Mr. E. Randolph Williams, counsel as stated:

1 XQ. Mr. Myers, article 3 in this contract provides that the Pennsylvania Railroad Co. "shall have access to the works of the party of the first part, or the works of the parties who are furnishing material for said tugboats, at any and all reasonable times during the construction of said boats, with full right and privilege to inspect the workmanship and all material used in the construction of each and all of said boats and with full right to condemn and reject if found inadequate or defective." Referring to that provision, were not these forms which are filed by Mr. Du Bosque, and noted as "Exhibit F. L. D. No. 1" sent to the Pennsylvania Railroad Co. to enable them to inspect the material and supplies to be used in the boats under this contract?

A. I have already testified that I did not know of my own knowledge that they were sent to the Pennsylvania Railroad Co.; but if

they were sent, they were sent to enable the Pennsylvania Railroad Co. to inspect the materials at the works of parties furnishing these particular orders, as well as compare the items ordered with their specifications.

2 XQ. When was the last return for taxation made by the Wm. R. Trigg Co. as a corporation, not by you as receiver?

A. I do not recollect.

3 XQ. It appears from the contract with the Pennsylvania Railroad Co. that it was entered into on the 30th day of June, 1902.

The tax returns for the city of Richmond and the State are made up as of Feb. 1st in each year; therefore, your return for taxation made Feb. 1st, 1902, would certainly not include any property in the yards subsequent to the 30th day of June, 1902, would it?

A. No.

4 XQ. Any return of taxes by the Wm. R. Trigg Co. which could have included the property assembled for the construction of these boats most necessarily have been made by the receiver, then?

A. Yes.

By Mr. Wm. C. Stuart, counsel as stated:

1 XQ. Mr. Myers, did the Pennsylvania Railroad Company or the New York, Philadelphia & Norfolk Railroad Co. furnish any of the supplies to the Wm. R. Trigg Co. for the building of these boats?

A. They furnished certain patterns; and, my recollection is, some small parts.

2 XQ. What I want to know is whether these orders for material or supplies were from the Wm. R. Trigg Co. to the material men, to be supplied to the Wm. R. Trigg Co. for use in building these boats?

A. The materials and supplies were ordered by the Wm. R. Trigg Co. from the supply houses.

3 XQ. Do you know whether these copies of orders which you have stated were furnished to the Pennsylvania Railroad Co. and also to the supply men, when the materials were ordered, had any further information upon them except the words "For Pennsylvania Railroad Tug No. " or "New York, Philadelphia & Norfolk Tug No. ?"

A. The orders contained a description of the materials required, and stated that they were for the Pennsylvania Railroad tugs, hulls 20 and 21.

4 XQ. Were the materials and supplies ordered consigned by the various supply men to the Wm. R. Trigg Co. and delivered into the possession of the Wm. R. Trigg Co.?

A. They were.

By Mr. Floyd Hughes, counsel as stated:

1 XQ. And that was the custom of the Wm. R. Trigg Co., not only with respect to the Pennsylvania Railroad boats, but with all the structures that they were erecting, was it not, Mr. Myers?

A. Yes.

506 Objection. Question objected to by Mr. F. L. Smith, counsel for, etc., so far as it refers to other boats than those claimed by the Pennsylvania Railroad Co. and the New York, Philadelphia & Norfolk Railroad Co.

2 XQ. So that there was no departure from the general custom of your company in ordering the material for these boats which are now the subject of this immediate investigation?

A. No.

Reexamination.

By Mr. Francis L. Smith, counsel as stated:

1 Q. Mr. Myers, you have testified in your cross-examination that the Pennsylvania Railroad Co. furnished certain patterns which were used during the construction of these tugboats above referred to. Is it or not a fact that these patterns form an important factor in the building and construction of these boats?

A. Yes, sir.

2 Q. Can you or not say whether the Pennsylvania Railroad Co. in fact did furnish material which has been embodied in the construction of these boats; for instance, such as rail casting, pattern No. 257?

A. On referring to our files, I find that certain materials were ordered from the Pennsylvania Railroad Co.

Recross-examination.

By Mr. Wm. C. Stuart, counsel as stated:

1 XQ. What material was it that you say was furnished by the Pennsylvania Railroad Co.?

A. One rail check casting is the only item that I now have before me.

2 XQ. Has that been settled for in the transaction?

A. No.

3 XQ. Would not such articles as that when furnished by the Pennsylvania Railroad Co. be paid for upon vouchers, just like any other supply?

A. Yes.

4 XQ. Now, will you state whether or not it was simply for the convenience of the supply men or material men that the state-
507 ment as to the particular boat for which the supplies were to be used was made at the head of the orders, or for the convenience of your own company, or both?

Objection. Question objected to by Mr. F. L. Smith, counsel for, etc., as being incompetent, irrelevant, and immaterial.

A. The designation was for the information and convenience of the supply men and the Wm. R. Trigg Co.

Further this deponent sayeth not.

Exhibit with depositions for Pennsylvania Railroad Company.

Invoice No. 273.

WILLIAM R. TRIGG COMPANY, SHIPBUILDERS,
Richmond, Va., Aug. 26, 1902.

Your order No.

Our order No.

Terms: Sold to Pennsylvania Railroad Co.

Address: Jersey City, N. J.

Copy.

J. V. T.

To first payment on "Chester" and "Bristol," as per contract
"when one-tenth completed," \$10,000.00.

(Original sent to W. W. A.)

(Endorsement on back:) Penn. R. R. Co., S. P. No. 8.

Exhibit with depositions for Pennsylvania Railroad Company.

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WILLIAM R. TRIGG COMPANY, SHIPBUILDERS,
Richmond, Va., August 26, 1902.

H. S. HAYWARD, *Supt. Motive Power,*
Jersey City, N. J.

DEAR SIR: We beg to enclose herewith our bill No. 273 for \$10,000.00 being first payment on tug boats "Chester" and "Bristol," Hulls No. 20 and No. 21. An early remittance will be appreciated.

Yours, very truly,

WILLIAM R. TRIGG COMPANY,
2nd Vice-President.

(Copy.)

Exhibit with depositions for Pennsylvania Railroad Company.

WILLIAM R. TRIGG COMPANY, SHIPBUILDERS,
Richmond, Va., August 27, 1902.

D. S. NEWHALL, *Pur. Agt.,*
Jersey City, N. J.

DEAR SIR: We enclose herewith a copy of our bill No. 273 and also a copy of our letter to your superintendent of motive power which explains itself.

Yours, very truly,

WILLIAM R. TRIGG COMPANY.
J. J. MONTAGUE.
KELLOGG, *2nd Vice-President.*

Extract from exhibit of Standard Oil Company No. 2.

No. 26 BROADWAY, NEW YORK, Jan. 30, 1902.

Standard Oil Company of New York, lighterage department.

509 (Rec. Jan. 31-02.) (No. 407.)

To Wm. R. Trigg Co. Dr. for items following; or as per attached bill or bills.

Payment on account of construction of steamer, due "when first material arrived in yard," as per contract dated No. 17th, 1901, \$21,975.00.

Properly signed; extensions and footings correct. Correct. (Conv.) Approved. R. C. Veit, O. L. H. Audited A. L. L. J. W. Grierson.

(Paid Jan. 31-02. S. O. Co.)

Date, , 190 . Received from the Standard Oil Company of New York twenty-one thousand nine hundred and seventy five dollars, amount in full for above acc't.
\$21,975.00.

WILLIAM R. TRIGG COMPANY,
LILBURN T. MYERS, V. P.

(Endorsement on back:) Voucher No. 348. \$21,975.00 Amount carried as order No. 106.

Standard Oil Company of New York, lighterage department.

Favor of. (Audited, G. E. Bacon.)

510 Wm. R. Trigg Co. Richmond, Va.

Date, Jan. 30th, 1902.

Account debited. Folio and amount. Line No.

Str. building at Wm. R. Trigg Co.. \$21,975.00. 67.

Audited. A. L. L. July 30, 1906.

Pencil as follows: Exhibit Standard Oil Co. No. 2. (Vouchers.)

I certify that the within is a true copy of the original voucher.

J. R. V. DANIEL, *Comr. in chy.*

Exhibit Standard Oil Company, No. 3.

RICHMOND, VA., May 23rd, 1902.

Mr. R. C. VEIT, *Manager S. & L. Dept.,**Standard Oil Company, New York.*

DEAR Mr. VEIT: I have wired Mr. Ford that the cylinder patterns are ready for inspection. I hope if he can not come immediately, he will send someone else. Please bear in mind that we have received about 80% of the material for this vessel, and have only had one payment. You can well suppose that we need money; and if you can not send the man, I think you ought to send check.

In this connection we have closed with Cramp for the boilers for this boat, and his terms of payment provide that the first payment shall be made when the material for the boilers has been delivered at

their works. Our contract with you provides for payment when the boiler material arrives in yard. I hope you will agreee to a liberal construction of this, and for the purpose of a payment consider the arrival of the material at Cramp's yard as entitling us to a payment.

Yours sincerely,

LILBURN T. MYERS,
Vice-President.

Copy sent Mr. Ford.

MAY 26, 1902.

Mr. L. T. MYERS,

V. P., Wm. R. Trigg Co., Richmond, Va.

Dear Mr. MYERS: Answering your favor of May 23rd, in regard to making payment when material for boilers is in Cramps shipyard:

When you are asked to make the first payment on boilers, please call up this matter, and we will then take it up with our people. You can well understand that we are very much discouraged with the progress of the work, and you not being responsible for the delay does not console us, as after all we need the vessel sadly, and delay at this end seems to indicate considerable disappointment in the latter part of the year. We are at our wits end for any suggestion, except to urge you to keep your best men personally after the Phoenix Co., that we at least may make some showing in the very near future. The fact of making payments when hull material is in yard, and when patterns of engine are completed, you will very well understand gives no encouragement as to the early completion of the vessel.

Yours, very truly,

OCT. 15, 1902.

D. E. FORD, *Phila.*

Can you ascertain how much Trigg people are to pay Cramps when boiler material is in yard? Contract provides for payments to Trigg \$21,975.00 when boiler material is in yard; the same amount when boilers are completed in yard, and the same amount when boilers are in ship. We must make some provision for the risk of delivery before making the payment as provided in contract.

R. C. VEIT.

512

TELEGRAPH DEPARTMENT,
26 BROADWAY, NEW YORK.

19 ND X W Phila., Oct. 15.

R. C. VEIT: Mr. Mull informs me that first payment due them on Trigg boilers amounts to \$7450.

D. E. FORD.
12m

PHILADELPHIA, PA., Oct. 14, 1902.

Mr. R. C. VEIT,

26 Broadway, N. Y.

DEAR SIR: I am in receipt of a letter from Mr. L. T. Myers asking for payment due "when boiler material is in yard." You understand that the Trigg people have contracted for these boilers with

the Cramp Shipbuilding Co., and I find that the material is now all at the Cramp yard, and that they also have considerable of the flanging done, and I understand that the Cramp people have been after them for a payment, and according to the terms of the contract, it would seem to me that they were entitled to the payment asked for.

I herewith inclose you report on the construction of this vessel for the week ending the 11th, which shows practically sixty tons put in place.

Yours very truly,

D. E. FORD.

Memo.—The contract for these boilers amount to about \$30,000.00 including the Howden forced draft.

OCTOBER 17TH, 1902.

Mr. L. T. MYERS,

V. P., Wm. R. Trigg Co., Richmond, Va.

DEAR SIR: On going over our contract with our attorney, he expresses as his opinion, that while we should meet the spirit of the contract by making a payment when boiler material is in yard, that this material not being in your own establishment as contemplated in the contract, that before making this payment, we should
513 have some assignment from Cramps that the boiler material is in their yard for our account, not for account of the Trigg Company, and suggest, that if possible, the contract for building these boilers should be turned over to us, permitting us to make payments to the Cramps, and authorizing us to insure the delivery of the boilers at your yard for your account. If you do not care to turn over the contract, it might be well to give us a letter to Cramps, stating that the boilers are being built for our account, and that the payments made to them by you are for our account, and the ownership in the boilers is to vest with this company to the extent of such payment as you may make.

To meet the spirit of the contract, that a payment is due "when boiler material is in yard," I am sending you a check for \$12,000.00 pending an adjustment of the ownership of boilers, which, of course, we cannot accept in Cramps.

Yours truly,

RICHMOND, VA., Oct. 18th, 1902.

Mr. R. C. VEIT, *Manager S. & L. Department,*
Standard Oil Company, New York.

DEAR SIR: I have your favor of October 17th, enclosing check for \$12,000.00.

In accordance with your suggestion relative to the payment, I enclose a certificate which you can forward to the Cramps, relative to the ownership of the boilers, which I believe puts the matter in the shape you desire. I am also sending direct to the Cramps a copy of this certificate, with a letter of explanation.

Yours very truly,

LILBURN T. MYERS,
Vice President.

OCT. 20, 1902.

Mr. M. F. ELLIOTT, *Building.*

Dear Mr. ELLIOTT: I presume this letter of the Trigg Co.
514 is sufficient for me to make the payment when boiler material is in Cramps yard, and that it might be as well for me to take the precaution of having them acknowledge this letter before making the payment.

Yours, truly,

NEW YORK, Oct. 20, 1902.

Mr. R. C. VEIT, *Building.*

DEAR SIR: I have your note with which you inclose letter from William R. Trigg Company to Messrs. William Cramp & Sons. I think the letter to Cramp & Sons will answer your purpose. You should do as you suggest, have Cramp & Sons acknowledge the letter from Wm. R. Trigg Company before making payment.

I herewith return Trigg's letter.

Yours truly,

M. F. ELLIOTT.
T.

TELEGRAPH DEPARTMENT,
26 BROADWAY, NEW YORK.
(Time received 12.22)

From Phila. Dec. 31, 1902.

To R. C. VEIT.

I think I could have work on Trigg boilers stopped if you think advisable. Material all in yard. Shell drilled and planed, but not rolled. All flanging about completed.

D. E. FORD.

Copy sent Mr. Ford.

OCTOBER 20TH, 1902.

WM. CRAMP & SONS SHIP & ENGINE BUILDING Co.,

Philadelphia, Pa.

GENTLEMEN: We understand Mr. L. T. Myers has sent you a similar letter to the enclosed. If so, will you kindly write us acknowledging receipt of such order from the Trigg Co., and that you
515 will consider that the boilers building at your works under contract with the Wm. R. Trigg Co. are made for account of this company, and that all payments made on the construction of the boilers are understood to be for account of this company, and the ownership of the boilers vest in this company to the extent of payments made by the Trigg people?

We ask this in order to protect the writer in payments under our contract with the Trigg Company, which of course provides for payments on boilers during construction in their yard, which we are willing to waive if it is understood that the ownership of the boilers vests with us.

Yours truly,

THE WILLIAM CRAMP & SONS SHIP & ENGINE BUILDING CO.,
OFFICE, BEACH & BALL STS.,
Philadelphia, Pa., October 21, 1902.

GENTLEMEN: We have received your letter without signature dated the 20th inst., enclosing copy of a communication in the form of a certificate from Mr. Lilburn T. Myers, vice-president of the Wm. R. Trigg Co., Richmond, Va., dated the 18th inst., the original of which was sent to us direct, to the effect that the boilers which we are building for that co. under contract dated April 30th, 1902, are for the Standard Oil Co. of N. Y., that payments made to us by the Wm. R. Trigg Co. are for account of the Standard Oil Co. of N. Y., and that the ownership of the boilers is to vest in that company to the extent of any payments made to us by the Trigg Co., and requesting that we acknowledge the receipt of such an order from the latter and give our assent to its general tenor.

In response we remark that our undertaking is as above specified and we agree to the arrangement made. We have so informed the Wm. R. Trigg Co. in a communication addressed to them to-day.

Very truly yours,

THE WM. CRAMP & SONS SHIP &
ENGINE BUILDING CO.,
CHAS. TAYLOR, *Sec'y & Treas.*

Standard Oil Co., 26 Broadway, N. Y. City, N. Y.

516

WM. R. TRIGG COMPANY.
Richmond, Va., October 16, 1902.

MESSRS. WM. CRAMP & SONS,
Philadelphia, Pa.

DEAR SIRS: This is to certify that the boilers which you are building for this company, under contract dated April 30th, 1902, are for the Standard Oil Company of New York. Any payments made to you by this company are for the account of the Standard Oil Company of New York, and the ownership of the boilers is to vest in that company, to the extent of any payments made to you by us.

Yours, very truly,

WILLIAM R. TRIGG CO.,
LILBURN T. MYERS, *Vice-Pres.*

WILLIAM R. TRIGG COMPANY,
Richmond, Va., October 16, 1903.

MESSRS. WILLIAM CRAMP & SONS,
Philadelphia, Pa.

DEAR SIRS: This is to certify that the boilers which you are building for this company, under a contract dated April 30th, 1902, are for the Standard Oil Company of New York. Any payments made to you by this company are for the account of the Standard Oil Com-

pany of New York, and the ownership of the boilers is to vest in that company, to the extent of any payments made to you by us.

Yours, very truly,

WILLIAM R. TRIGG COMPANY,
LILBURN T. MYERS, *Vice-President.*

PHILADELPHIA, PA., *October 21, 1903.*

GENTLEMEN: We have received your letter without signature dated the 20th instant enclosing copy of a communication in the form of a certificate from Mr. Lilburn T. Myers, vice-president of the
517 William R. Trigg Company, Richmond, Va., dated the 18th inst., the original of which was sent to us direct, to the effect that the boilers which we are building for that company, under contract dated April 30th, 1902, are for the Standard Oil Company of New York, that payment made to us by the William R. Trigg Co. are for the account of the Standard Oil Company of New York, and that the ownership of the boilers is to vest in that company to the extent of any payments made to us by the Trigg Company; and requesting that we acknowledge the receipt of such an order from the latter and give our assent to its general tenor.

In response we remark that our understanding is as above specified, and we agree to the arrangement made. We have so informed the William R. Trigg Co. in a communication addressed to them to-day.

Very truly, yours,

THE WILLIAM CRAMP & SONS SHIP
& ENGINE BUILDING COMPANY,
CHAS. T. TAYLOR,
Secretary and Treasurer.

STANDARD OIL CO.,
26 Broadway, New York City, N. Y.

Copy sent to Mr. Ford.

OCTOBER 22, 1902.

Mr. L. T. MYERS,

V. P., Wm. R. Trigg Co., Richmond, Va.

DEAR SIR: Enclosed herewith please find check for nine thousand nine hundred and seventy-five (\$9,975.00) dollars, balance on account of payment "when boiler material is in yard," as per contract dated November 7th, 1901, subject to Wm. Cramp & Sons letter of October 21st, 1902.

Kindly receipt enclosed voucher and return.

Yours, truly,

PHILADELPHIA, PA., *Jan. 7, 1903.*

Mr. R. C. VEIT,

26 Broadway, N. Y.

DEAR SIR: Replying to your favor of the 5th, in relation to the Trigg boilers building by the Cramp people, will say that I
518 took up the matter of payments with Mr. Mull to-day, who

informs me that they have received one payment from the Trigg people on these boilers, amounting to \$7,500, due "when boiler material is in yard."

Yours, very truly,

D. E. FORD.

JAN. 5, 1903.

Mr. D. E. FORD,

Philadelphia, Pa.

DEAR SIR: You will remember that Mr. Mull informed you on Oct. 15th, that the first payment on Trigg boilers, was due them at that time, amounting to \$7,450, which payment was to be made for account of the "S. O. Co."

Will you please ask the Cramp people to let us know how much money, if any, they have received from the Trigg Company for the construction of the boilers, that we may definitely understand what our position is in regard to this matter? I find we have no notice that any payment has been made by the Trigg Company to the Cramp people, though our check sent the Trigg people on Oct. 22d, we understood would be used for payment "when boiler material is in yard" at Cramps.

Yours, truly,

519 No. 6819 William R. Trigg Company, Date 3-1-02
Richmond, Va.

This order is for Standard Oil Company's tank steamer, hull No. 19, hull department.

To the Cleveland City Forge & Iron Co., Cleveland, Ohio:

Please enter our order for the following, and state in acknowledgment when shipment will be made:

No. Pieces	Size	Length.	Article—Material.	Ref. No.	Plan. No.	Title of Plan.
1	11" x 2-7/8 x 27 ft. long.		Best hammered iron.			For stem.
1	11" x 2-7/8 x 26 ft. long.		" " "			
1	8" x 6-1/2" x 13' 6" long.		" " "			

Price as per your letter of 2-27-02.

Subject to inspection by Stand. Oil Co.'s inspector.

Important! Ship care of our storekeeper, Richmond, Va. Render invoices in triplicate—one without prices. Show on each invoice order No. given above. Send bill lading with freight rate shown.

LILBURN T. MYERS,
Vice-President.
H. F. H., Order Clerk.

520 I, Charles O. Saville, clerk of the chancery court of the city of Richmond, hereby certify that the foregoing is a true transcript of so much of the record as was ordered by counsel, and that notice in obedience to section 3457, Pollard's Code of Virginia, has been duly given.

CHAS. O. SAVILLE, *Clerk*.

Fee for transcript of record, \$98.70.

A copy: Teste:

H. STEWART JONES, *C. C.*

521 In the Supreme Court of Appeals of Virginia, at Richmond.

S. H. HAWES & CO. ET ALS. }

v. }

WM. R. TRIGG CO. ET ALS. }

Supplemental record.

Virginia:

In the clerk's office of the Chancery Court of the City of Richmond.

Extracts from the depositions returned with Commissioner Massie's Report No. 4 in the suit of "S. H. Hawes & Co. v. Wm. R. Trigg Co. and others." Proof to the claim of the First National Bank of Richmond, pages 207a to 218a, inclusive.

VIRGINIUS NEWTON.

Mr. Virginius Newton, a witness on behalf of the First National Bank of Richmond, being duly sworn, deposes and says as follows, in answer to questions propounded:

By Mr. George Bryan, counsel as stated:

1 Q. Please state your relation to the First National Bank of Richmond.

A. I am president of the First National Bank of Richmond.

2 Q. Please state whether or not the Wm. R. Trigg Co. owes your bank money; and if so, how much, what are the evidences of the debt, and the nature of the securities, if any, held by the bank?

A. The Wm. R. Trigg Co. is debtor to the First National Bank of Richmond this day in the sum of \$52,036, and interest thereon from September 30th, 1902, as evidenced by three notes, now exhibited: Two notes of date Oct. 16, 1900, each for the sum of \$25,000, made by the Wm. R. Trigg Co. by Lilburn T. Myers, vice-president, payable on demand to the First National Bank of Richmond. Also a note of date April 29, 1901, payable on demand to the First National Bank of Richmond, Virginia, for the sum of \$5,070, on which there is a credit for the sum of \$3,034. These are collateral notes, for which we will file copies later.

The collateral designated in the said three notes, and held as collateral, were the contracts of the Wm. R. Trigg Co. with the United States Government for the construction of United States revenue cutters Nos. 7 and 8.

As additional security for the aforesaid loan, the First National Bank received of the Wm. R. Trigg Co. a power of attorney, of date May 11, 1900, appointing the said bank their true and lawful attorneys to collect all payments due to the said Wm. R. Trigg Co. by the United States Government on account of the contracts entered into on the 20th day of April, 1900, between the Wm. R. Trigg Co. and the United States Government for the construction of revenue cutters Nos. 7 and 8; to which said power of attorney is attached an attested copy of a resolution of the board of directors of the Wm. R. Trigg Co., held on the 11th day of May, 1900, in which resolution Mr. Lilburn T. Myers, vice-president, and William C. Preston, secretary of the company, were directed to execute a proper power of attorney giving authority to the First National Bank of Richmond to collect all payments due the company by the United States Government on account of its contracts for the construction of revenue cutters Nos. 7 and 8.

I shall file copies of all of these papers, the originals of which are now produced. Mark "Exhibits First National Bank Nos. 1, 2, 3, 4, 5, and 6."

Objection. Mr. Wm. C. Stuart, counsel for certain creditors of the Wm. R. Trigg Co. represented by Bickford & Stuart, notes the following objection:

523 I here object to that part of the answer of the witness wherein he recites the security to the First National Bank said to be afforded by the deposit with the said bank of the said government contracts with the said Wm. R. Trigg Co. and the power of attorney mentioned, and the resolution of the board of directors of the Wm. R. Trigg Co. pursuant to which the same was made, for the reason that no proper foundation has been laid for this proof, as it has not been shown that any amount due the Wm. R. Trigg Co. by the Government was ascertained, or allowed, or a warrant issued therefor, prior to the passing of the said resolution or the execution of the said power of attorney; and for the further reason that the said intended transfer of said contract is illegal because the said power of attorney on its face is illegal, null, and void, not having been executed, acknowledged, witnessed, or certified to as required by law.

The commissioner here directs that the following letter from Floyd Hughes, esq., counsel for the C. C. Knight Co., be filed as part of the record:

"NORFOLK, VA., Oct. 14, 1903.

"HON. J. R. V. DANIEL,

"Commissioner in Chancery,

"Richmond, Va.

"DEAR MR. DANIEL: I have just received a telegram from Mess. Bryan & Williams notifying me that they expect to prove claim of the First National Bank in the Trigg case to-morrow at one o'clock.

"It will be absolutely impossible for me to be in Richmond tomorrow, and I therefore write to ask that you have an objection entered on behalf of the clients that I represent to all testimony relating to the proof of claims against the Trigg Company under assignments of the government loss or reservation claims. I wish to go on record as excepting to the proof of these claims unless they shall prove that the transfer or assignment of these claims was made by a written instrument duly attested by two witnesses after the allowance of the claim against the Government, the ascertainment of the amount due, and the issuing of the warrant for the payment thereof.

"This is under the authority of section #3477 of the U. S. Revised Statutes, and we contend this statute operates against
524 all the assignments of the government claims mentioned in the petition of C. C. Knight & Company. If you will kindly make a note of record to this effect on your notes of testimony, I do not care especially about being present at the proving of this claim and claims of a like nature, because I have no doubt that the assignments were made and the money actually paid therefor.

"If any of the counsel have any objection to having a note of this nature placed on record, I should be very much obliged if you will advise me at once so that I may be present and make the proper objection in person. I trust, however, that such will not be the case.

"I was not informed until yesterday afternoon by Stuart that any of the claims under such assignments had been proved before you, as you know I have not been present but three days during the examination. My desire, of course, is to make this objection as to all claims of this nature, so the matter may be fully presented to the court without any technical formalities, so that the court may pass on the force and effect of this statute. I do not want now, or at any time, to place myself in the position of allowing this proof to go before you without objection or any way estopping myself from setting up this statute as against these claims.

"Yours, very truly,

"(Signed) FLOYD HUGHES."

3 Q. Please state, in a general way, the circumstances attending the execution by the Wm. R. Trigg Co. of the power of attorney, and the understanding between the Wm. R. Trigg Co. and the First National Bank of Richmond.

A. I will state generally that when the Trigg shipyards undertook the building of these cutters for the Government that either Mr. Trigg or Mr. Myers, I cannot say which, saw me in regard to making certain advances upon this work, to enable them to enter upon the construction and carry the same to completion; the major part of the conference on the subject was certainly held with Mr. Myers. The understanding was that the bank was to advance and keep out until the completion of the two cutters the amount of reserve required by

the United States Government, which was to be returned upon their completion. The bank was unwilling to enter into the negotiation without some form of security offered to it. The form of security offered, and which was accepted by the bank, was a deposit
 525 of the contracts with the Government, to be assigned to the bank for its security; and in addition, a power of attorney to collect all moneys to be paid by the Government under these contracts to the Wm. R. Trigg Co.

4 Q. Was this agreement executed and the contracts with the Government delivered to the bank?

A. The contracts were duly delivered to the bank and the power of attorney to collect ~~ann~~ the moneys due by the Government thereunder.

5 Q. Was Mr. Trigg or Mr. Myers the agent of the Wm. R. Trigg Co. with whom you finally consummated the agreement?

A. My best recollection is that the preliminary transaction, or that the preliminary conference in regard to this matter was held with Mr. Trigg; the remainder of the negotiation was completed with Mr. Myers.

6 Q. What was your understanding with either or both of these gentlemen as to the nature of the instrument to be given you by the Wm. R. Trigg Co.?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., as the whole transaction as placed in evidence is in writing, and is the best evidence of its own nature.

A. The understanding was that the contracts and power of attorney were absolute security for all the loans to be made under these contracts.

Objection. This answer is also objected to by Mr. Wm. C. Stuart, counsel for, etc., for the reason that the question as to whether or not the security was absolute is one of law and cannot be affected by whatever understanding may have existed between the Wm. R. Trigg Co. and the First National Bank; and the interests of the creditors of the Wm. R. Trigg Co. cannot be affected by such incompetent testimony.

7 Q. What was the understanding of the parties as to the exact legal effect of the power of attorney?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., for the reason given above, and because it is immaterial.

A. We both understood and we thought that the contracts
 526 and papers passed in the negotiation were a full and complete security for any advances to be made by the bank under its engagement.

8 Q. A security in what sense?

A. A security against any loss to the bank, or preference to any other creditors.

Objection. Question and answer objected to by Mr. Wm. C. Stuart, counsel for, etc., as immaterial.

9 Q. State again what the original agreement was between the Wm. R. Trigg Co. and the bank as to the manner in which the bank loans to the company would be secured.

Objection. Question objected to by counsel for the creditors on the ground that no understanding which may have existed between the First National Bank and the Wm. R. Trigg Co. can affect the interests of the said creditors.

(By Mr. Stuart.)

A. The agreement was that all sums to be advanced to the Wm. R. Trigg Co. for the completion of the two cutters was to be secured by an assignment of the contracts.

By Mr. F. W. Christian, counsel as stated:

1 Q. When you speak of the assignment of the contracts, do you mean the assignment of all sums which would become due and payable to the Wm. R. Trigg Co. by the Government under the contracts in question?

Objection. Question objected to by Mr. Wm. C. Stuart, counsel for, etc., as leading.

Question withdrawn.

2 Q. State what you mean by assignment of the contracts.

A. That the contracts were to be delivered to the bank, held in their possession, and all moneys due under them by the Government to the Trigg shipyard were to be collected by the First National Bank.

Objection. Answer objected to by Mr. Wm. C. Stuart, counsel for, etc., on the ground that it is immaterial.

527 3 Q. Were the deposit of the contracts with the bank and the execution of the power of attorney supposed by both the Wm. R. Trigg Co. and the bank to carry out this agreement and pledge?

Objection. Mr. Wm. C. Stuart, counsel for, etc., notes the same objection as above.

A. They were so regarded by both parties.

Cross-examination:

By Mr. Wm. C. Stuart, counsel as stated:

1 XQ. Mr. Newton, did the First National Bank ever collect any money from the United States Government under this power of attorney at any time after it was executed?

A. My impression is, it is an impression that amounts almost to a certainty, that all moneys whatsoever paid by the Government under these contracts were paid to the First National Bank. One of the cutters was paid for in full, and received by the Government.

2 XQ. You did not intend to state this of your own knowledge, however?

A. Every detail, every sum received from the Government under these contracts, did not pass through my hands or come within my notice, but the payments were made sufficiently frequent to raise in my mind the impression that all moneys whatsoever received from

the Government under these contracts were paid to the First National Bank.

3 XQ. Of course I am not asking for your impression, but I will, however, ask whether or not any moneys, which you know of your own knowledge to have been received by the First National Bank on account of the building of one or both of these vessels, were paid to the bank by the United States Government or by the Wm. R. Trigg Co.?

A. They were paid to the bank. Remittances under these contracts were made directly to the bank.

4 XQ. By the United States Government or by the Wm. R. Trigg Co.?

A. The remittances were made by the Government to the bank directly. The checks were made payable, my impression is, to the order of the Wm. R. Trigg Co., and we advised the company of the receipt of these checks from time to time, upon which they
528 would come to the bank and endorse the checks payable to us, which we collected and applied in liquidation of their debt from time to time.

5 XQ. Then the Government did not remit direct to you or recognize the First National Bank as the payee on these contracts?

A. I think they must have realized some obligation resting upon the Government to make these remittances to the bank, for unless they had received and accepted notification of the fact that payments under these contracts had been assigned to the bank there would have been no reason for their making their remittances to the bank. My impression is that they acknowledged the receipt of the power of attorney and thereafter conformed thereto in making their remittances.

6 XQ. As a matter of fact, Mr. Newton, although the Government may have known of the obligation of the Wm. R. Trigg Co. to the bank, did they not simply forward these checks to the bank as a means of accommodation to it in collecting its indebtedness from the Wm. R. Trigg Co.?

A. I think not; it was not to facilitate the business of the Wm. R. Trigg Co., but to satisfy us for moneys previously advanced.

7 XQ. As a matter of fact, could the bank have collected any of these government checks which were payable to its order unless the Wm. R. Trigg Co. had endorsed it to them?

A. Undoubtedly the bank could not have collected on checks of that character without the endorsement of the Wm. R. Trigg Co., but the bank would never have delivered these checks to the Trigg Company or anybody else; they would have simply held them.

8 XQ. So that the Government placed it in your power to force the Wm. R. Trigg Co. to pay you when they received their payments?

A. I think so.

9 XQ. Is it not a fact that some of these payments made by the Government to the Wm. R. Trigg Co. on these contracts were deposited to the credit of the Wm. R. Trigg Co. and then checked out by them to the bank or other creditors?

A. The engagement of the bank was to carry the 25% of reserve required by the Government until both of the vessels were completed. In any payments made by the Government, if there was an excess beyond the reserve which the bank had engaged to carry, undoubtedly this surplus would have been passed to the credit of the Wm. R. Trigg Co., if they so desired.

529 10 XQ. As to the amounts now due the Wm. R. Trigg Co. by the Government, and which you seek to hold as security under this power of attorney for the indebtedness due your bank, had any part of this become due at the time this power of attorney was executed?

A. I do not know that I can answer that question, because work on the two cutters may have progressed *pari passu*, and the reserve might have accumulated on one or both.

11 XQ. Do you know, of your own knowledge, whether any money had become due the Wm. R. Trigg Co., or allowed by the United States Government, or any payment on the contract ascertained, or any warrant issued for any such payment by the Government prior to the time this power of attorney was executed?

A. I do not know.

Redirect examination:

By Mr. George Bryan, counsel as stated:

1 Q. In the early part of his cross-examination, Mr. Stuart inquired of you as to the source of your knowledge of the payments made by the Government to the bank under the power of attorney and the contracts held by you. He asked you as to whether you knew of these payments of your own knowledge or whether they were impressions of yours to that effect. Please state whether or not, in the regular course of business of the bank, these payments would have been reported to you as the president of the bank.

A. Usually payments of this character would not have been reported to me. They would have been received by the cashier of the bank, and by him duly credited or disposed of. But I have a distinct recollection of having had in my hand checks, either four or six checks, from the Government, indicating payments made under these contracts by the Government.

2 Q. Referring further to the questions asked you upon cross-examination, is it or is it not your recollection that the Government was notified by the bank of the power of attorney from the Wm. R. Trigg Co. to your bank?

A. I can not state positively whether the bank notified the Government of the lodgment with it of the power of attorney of the Wm. R. Trigg Co. My impression is that the bank did so. I am positive that within a few days after the power of attorney was lodged with
the bank that the bank received notification by letter from the
530 Trigg Company that the Government had been duly advised of the power of attorney lodged with the bank; also that the bank was subsequently advised by letter from the agent of the Wm.

R. Trigg Co. in Washington of the lodgment of the power with the officer in charge of the United States Revenue-Cutter Service.

Objection. Answer objected to by Mr. Wm. C. Stuart, counsel for, etc., in so far as it states the impression and opinion of the witness and his statement as to contents of the letters referred to; and objection is made generally to such part of his answers as states his impressions.

* * * * *

Pages 234 to 235, inclusive.

S. H. HAWES & CO., PLAINTIFFS,	}
v.	
WM. R. TRIGG CO. ET ALS., DEFENDANTS.	

OFFICE OF WILLIAM R. TRIGG COMPANY,
Richmond, Va., October 23rd, 1903.

Met pursuant to adjournment.

Present: Sol. L. Bloomberg, counsel for Mrs. S. I. Harbaugh, Hunter B. Frischkorn, and Richmond Pattern Works.

Sol. Cutchins, for Tower-Binford Electric & Mfg. Co.

H. W. Goodwyn, for Whittet & Shepperson, George A. Taber, Gebbie & Co., A. R. Bowles, and Howard Swineford & Son.

M. M. McGuire, for American Locomotive Co., A. P. Swoyer & Co., Morris Machine Works, Crocker-Wheeler Co., John Tyler & Co., and Southern Railway Co.

George P. Haw, for Joseph Heppert, assignee of D. D. Puryear.

Emmett Seaton, for J. C. Cheatwood, John H. McGowan Co. and Quaker City Rubber Co.

W. H. Sands, for Morse Bros.

George Bryan, J. J. Leake, whose appearances have been heretofore noted.

531 Mr. VIRGINIUS NEWTON, recalled for examination:

By Mr. George Bryan, counsel as stated:

1. 2. Upon your redirect examination on the 17th inst. you testified to the notification by the First National Bank to the United States Government of the power of attorney of the Wm. R. Trigg Co. to your bank. Please state whether the bank received any acknowledgment of this notification or not; and if so, what?

A. At the time of my testimony I was unable to state whether the Treasury Department had ever notified the bank of the receipt of its notification of the filing power of attorney to collect all moneys to be paid under the cutter contracts. I desire to supplement my testimony by the statement that the bank has a letter, of date October 19th, 1903, from the Treasury Department as follows:

"In reply to your letter of the 16th inst., asking for a copy of the letter of acknowledgment of your communication of May 12, 1900, transmitting to the department power of attorney from the William R. Trigg Company, of Richmond, authorizing the First National

Bank to collect all payments to become due to said company from the United States Government on the contract made April 20, 1900, for the construction of two revenue cutters, known as No. 7 and No. 8, R. C. S., you are informed that the records of the department show the above mentioned communication to have been received at the department May 14, 1900, but its receipt does not appear to have been acknowledged.

"Respectfully,

R. R. ARMSTRONG,
"Assistant Secretary."

I will file the original letter with the commissioner, marked "First National Bank, No. 8."

Counsel for the First National Bank, in the absence of Mr. Wm. C. Stuart and Mr. E. Randolph Williams, asks that leave be reserved them to make the same objections to the deposition of Mr. Newton as given as have been heretofore noted by them.

532 LILBURN T. MYERS.

Pages 321 to mark x, on page 327—

S. H. HAWES & Co., PLAINTIFFS,	}
v.	
WM. R. TRIGG CO. ET ALS., DEFENDANTS.	

OFFICE OF WILLIAM R. TRIGG COMPANY,
Richmond, Va., November 27th, 1903.

Present: B. B. Munford, Eppa Hunton, F. W. Christian, Geo. Bryan, A. W. Patterson, Wm. C. Stuart, J. J. Leake, all of whose appearances have been heretofore noted.

Mr. L. T. MYERS, recalled for examination by counsel for the First National Bank.

By Mr. George Bryan, counsel as stated:

1 Q. Mr. Myers, the First National Bank of Richmond has presented the commissioner in this suit its claim for money loaned the Wm. R. Trigg Co. Please state, as far as your knowledge goes, the circumstances under which the loan was contracted, and what was the agreement between the bank and the Wm. R. Trigg Co. as to how the loan should be secured.

A. Mr. Trigg, the president of the company, stated to me that he had seen the president of the First National Bank and arranged to assign the contracts for the revenue cutters as security for a loan, and directed me to see the president of the bank and arrange the details. Accordingly, I had an interview with Mr. Newton and arranged to file the contracts with the bank, the understanding being that the contracts were to be assigned to the bank as security for the loan. I also filed at the bank a power of attorney, and the resolution of the board of directors. It was my understanding that the bank was to advance the amount of the government reserve, which was twenty-five per cent (25%) of the contract price.

Objection. Question and answer objected to by Mr. Wm. C. Stuart, on behalf of creditors represented by Messrs. Bickford & Stuart, on the ground that the testimony as to the understanding between the Wm. R. Trigg Co. and the bank cannot affect the actual character of the assignment, and cannot operate as against these creditors; and also because part of the answer is hearsay evidence.

2 X. As I understand it, negotiations were begun by Mr. Trigg, but concluded by yourself with the bank; am I correct?

A. Yes, sir.

3 Q. And did you in this way become privy to the agreement between the parties?

A. Yes, sir.

Objection. Question and answer objected to by Mr. Wm. C. Stuart, counsel for. etc., as leading.

4 Q. Will you state again what was the security agreed to be given the bank for the loan, and on what cutters?

A. An assignment of the contracts with the Government for the construction of the United States revenue cutters Nos. 7 and 8.

5 Q. Now, will you state whether, and if so, how, the agreement to make this assignment was carried out?

A. As I stated before, I carried the contracts to the bank and deposited them there, or hypothecated them with the bank as security for the loan; and, as I have already said, I filed with the bank a resolution of the board of directors of the Wm. R. Trigg Co. giving the bank power of attorney to collect all payments on account of the contracts.

6 Q. With what purpose was the power of attorney, with the accompanying resolution of your board of directors, lodged with the bank?

A. I cannot say that I understand your question.

7 Q. What was your purpose; your object?

A. I have already said it was put there to give the bank the right to collect all moneys due on the contracts.

8 Q. For what purpose?

A. For the purpose of reimbursing itself for this loan.

Objection. Both of above answers objected to by Mr. Wm. C. Stuart, on the ground that the witness' opinion as to the security afforded by depositing the contracts is not competent, as that is a matter of law; and on the ground that his testimony as to the contents of the resolution is not competent.

534 Cross-examination:

By Mr. Wm. C. Stuart, counsel as stated:

1 XQ. Mr. Myers, when you said that you hypothecated these contracts with the bank as security, did you mean that you simply delivered the contracts to the bank, or that there was a regular assignment of these contracts made to the bank in writing?

A. I delivered no papers except those I have indicated.

2 XQ. As a matter of fact, there was no assignment of the contracts between the Government and the Wm. R. Trigg Co. in writing to the First National Bank, was there?

Objection. Question objected to by counsel for the First National Bank, as calling for the legal opinion of the witness as to the effect of the written power of attorney.

A. I do not recall the filing of any papers except the power of attorney and the contracts. It was my understanding at that time that the contracts had been signed in the filing of those papers. In other words, I understood that there was an agreement between the Wm. R. Trigg Co. and the First National Bank that the loan was secured by the assignment of the contracts.

Exception. The answer, so far as it states the understanding of the witness, is excepted to by counsel for the first mortgage bondholders and certain supply creditors.

3 XQ. I did not ask you to state what was your understanding as to the effect of the delivery of these contracts and this power of attorney to the bank. My question simply is whether or not, independently of this resolution you have mentioned and this power of attorney which was executed by your company, there was any written assignment of the contracts with the Government made and delivered to the bank.

A. I believe I have already stated that there were no papers delivered to the bank except those indicated, so far as I am informed.

By Mr. Eppa Hunton, of Munford, Hunton, Williams & Anderson, counsel as stated:

1 XQ. Were the contracts referred to and power of attorney filed with the First National Bank at the same time?

A. I am unable to recall.

2 XQ. At what period, with reference to the time at which the money was actually loaned, were these papers filed?

A. As I recall it, it was done simultaneously with the advance by the bank of the first instalment of the loan. My recollection is that I carried the contracts to the bank before the first loan was made.

3 XQ. Then upon your filing the contracts between the United States Government and the Trigg Company for the two cutters and the power of attorney, they made these loans to you?

A. The books show that the first loan was made April 26, 1900, and the power of attorney was dated May 11, 1900, so that the first loan was actually made prior to the filing of the power of attorney.

4 XQ. How much was loaned prior to the filing of the power of attorney?

A. \$25,000.

5 XQ. Was there any other loan made prior to the filing of the power of attorney?

A. No, sir.

6 XQ. Then all that had been done prior to the actual making of the first loan of \$25,000 was the filing with the First National

Bank the contracts between the Trigg Company and the Government for the two cutters?

A. That is my recollection.

7 XQ. You have referred to filing a resolution of the board of directors of the Trigg Company authorizing this power of attorney to be given. Was that filed at the same time as the power of attorney?

A. They were filed at the same time.

By Mr. F. W. Christian, counsel as stated:

1 XQ. You have just stated that prior to the first loan all that was done was to file the contracts between the Government and the Trigg Company. Do you mean, or do you not mean, that prior to the first loan the agreement which you have already testified to between the Trigg Company and the president of the First National Bank that the contracts with the Government should be assigned to the bank as security for all advances made by it had or had not then been made?

536 A. I mean that the only papers which had been deposited prior to the first loan were the contracts. The understanding or agreement with the bank had been reached and made prior to the advance of any money.

By Mr. Wm. C. Stuart, counsel as stated:

4 XQ. Mr. Myers, at the time the alleged assignment of these contracts was made to the bank, had there been any allowance of any claim by the Government to the Trigg Company, or the ascertainment of any amount due on any claim against the Government under any of these contracts covering cutters Nos. 7 and 8, or any warrant issued for any payment under these contracts?

A. No, sir.

Counsel for the First National Bank here announces that the evidence in support of its claim is complete; and counsel representing other creditors announce to the commissioner that they have no other evidence they desire to submit in reference to that subject.

* * * * *

Pages 338-340, inclusive—

4 Q. Was this money, which you say had been earned, due by the Government at that time, either as to the government reserve or the residue thereof?

A. No; no payment was due until the vessel was ten per cent complete, and at the time of the first loan the vessel was only about five per cent complete.

By Mr. George Bryan, counsel, as stated:

1 Q. Referring to the claim of the First National Bank of Richmond and the papers attached thereto, as to which testimony has been heretofore given by Mr. Virginius Newton and yourself, I wish to ask you, Mr. Myers, a further question as to the disposition of any government moneys that were received under the assigned contract

on revenue cutters Nos. 7 and 8. Please state when payments were made by the Government what was done in regard to them, and to whom they were sent.

A. The checks were mailed direct to the bank, payable to the
537 order of the Wm. R. Trigg Co. and I called at the bank and endorsed them when notified by the bank of their receipt.

By Mr. J. J. Leake, counsel as stated:

1 Q. Mr. Myers, have you the original contract between the Government and the Wm. R. Trigg Co. for the construction of the hull and propelling machinery of the dredge "Benyaurd?"

A. The original was filed at the Savings Bank of Richmond, and was to-day produced before the commissioner by Mr. A. W. Patterson, counsel for the said bank.

2 Q. Will you please file with the commissioner a complete copy of said contract, with specifications attached?

A. I herewith hand you a complete copy requested, which I now herewith file, marked "Exhibit Hull 'Benyaurd.'"

3 Q. Have you in your possession the original contract between the United States and the Wm. R. Trigg Co. for the construction and installation of the pumping machinery for the said dredge?

A. Yes, sir.

4 Q. Will you please file with the commissioner a complete copy of the same, together with the advertisement and specifications therefor?

A. I herewith file a complete copy of same, marked "Exhibit 'Benyaurd' Pumping Machinery."

5 Q. Have you in your possession the original contract between the Wm. R. Trigg Co. and the Bucyrus Co. for the construction by the latter company of the said pumping machinery?

A. Yes, sir.

6 Q. Will you please file with the commissioner a complete copy of the same?

A. I do herewith file a complete copy of said contract, marked "Exhibit 'Benyaurd Contract,'" to which the said advertisement and specifications are attached as a part thereof; I mean the specifications for the pumping machinery only.

7 Q. Please state whether or not the Wm. R. Trigg Co. was required to execute to the United States any bond, securing the faithful performance on the part of the Wm. R. Trigg Co., of its contract with the United States for the construction and installation of the said pumping machinery.

A. The Wm. R. Trigg Co. gave bond, with the Virginia Trust Co. as surety, in the sum of \$10,000. The original was
538 forwarded to the United States Government and is presumably in their possession.

8 Q. Will you please file a copy of said bond, if you have a complete copy of same?

A. I file herewith, marked "Exhibit Pumping Machinery Bond," an exact copy of said bond, except as to the signatures and one or two dates near the conclusion of the bond. This bond was duly executed by the Wm. R. Trigg Co. and the Virginia Trust Co.

Adjourned to December 8th, at 11 o'clock, at the commissioner's office.

S. H. HAWES & Co. }
v.
W. R. TRIGG Co. }

EXHIBIT FIRST NATIONAL BANK NO. 2.

Filed before Com'r Daniel, with deposition of Virginius Newton, Oct. 15, 1903.

(Copy. Duplicate.)

Know all men by these presents, that the William R. Trigg Company, a corporation duly chartered under the laws of the State of Virginia, has hereby constituted, and by these presents does hereby constitute and appoint the First National Bank of Richmond, Va., a corporation chartered under the laws of the United States, its true and lawful attorney for it, and in its name, to collect all payments due to the William R. Trigg Company by the United States Government, on account of the contracts entered into on the 20th day of April, 1900, between the William R. Trigg Company and the United States Government for the construction of two revenue cutters, viz, Nos. 7, R. C. S., and 8, R. C. S., hereby ratifying and confirming all acts done by the said First National Bank in the premises.

This power of attorney is executed in pursuance of a resolution of the board of directors of the William R. Trigg Company, at a meeting held on May 11th, 1900, a certified copy of which is hereto attached, as a part hereof.

In witness whereof, the William R. Trigg Company has caused its name to be hereto affixed by L. T. Myers, its vice-president, and the seal of said company, by Wm. C. Preston, its secretary, this the 11th day of May, 1900, at Richmond, Va.

(Signed) WILLIAM R. TRIGG COMPANY,
L. T. MYERS, *Vice-President*.

(Corporate seal.)
(Wm. R. Trigg Co.)

Attest:

(Signed) WM. C. PRESTON, *Sec'y*.

EXHIBIT NO. 3—FIRST NATIONAL BANK.

At a meeting of the board of directors of the William R. Trigg Company, held in Richmond, Va., on the 11th day of May, 1900, the following resolution was unanimously adopted:

"On motion, the First National Bank was appointed the financial agent of this company, and the vice-president, L. T. Myers, and secretary, Wm. C. Preston, were directed to execute a proper power of attorney, giving authority to the First National Bank of Richmond, Va., to collect all payments due to this company by the United States Government on account of its contract for the construction of revenue cutters Nos. 7, R. C. S., and 8, R. C. S."

An extract from the minutes.

(Corporate seal.) (Signed) WM. C. PRESTON, *Secretary*.
(Wm. R. Trigg Co.)

Attest:

(Signed) WM. C. PRESTON, *Sec'y*.

EXHIBIT No. 4—FIRST NATIONAL BANK.

(Copy.)

\$25,000.00.

RICHMOND, VA., *Octo. 16, 1900.*

540 On demand, and upon return of securities given, the Wm. R. Trigg Co. promises to pay to the First National Bank of Richmond, Va., or order, twenty-five thousand dollars—negotiable and payable at the First National Bank, Richmond, Va., value received, having deposited with the said bank as collateral security contracts for U. S. revenue cutters #7 & 8.

If the market value of said securities, or of any hereafter deposited therewith, or of the remainder after the application of any part thereof to any other note or claim, shall at any time be less than per cent beyond the amount of this note and interest, the said bank shall have the right, until this note be paid, to retain and apply any money, collaterals, security, or property of of any kind, that it may then have or thereafter acquire, to make good the deficiency.

In case of the nonpayment of this note, according to its terms hereby authorize said bank to sell said collaterals, securities, or property, and to apply the aforesaid money and the net proceeds of such sale to the payment of this note and interest thereon; such sale to be made at the bank's option, without notice, at the board of brokers or at public or private sale. Any amount which may then remain due hereon promise to pay to said bank, forthwith after such sale, with legal interest.

It is further agreed, that said collaterals, or any excess in the value thereof; or any surplus from the sale thereof, beyond the amount due hereon, shall be applicable upon any other note or claim held by said bank against , and for that purpose may be sold in the manner above stated; and if said bank hold no other note or claim against , such surplus, after payment of this note, shall be returned to , and in case of any exchange of or addition to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals.

It is also understood that upon any sale of any of said collaterals, said bank may become the purchaser thereof and hold the same thereafter in its own right, absolutely free from any claim of

(Signed) WILLIAM R. TRIGG COMPANY,

By LILBURN T. MYERS, *Vice-President.*

(\$5.00 U. S. rev. stamp cancelled.)

541 EXHIBIT No. 5—FIRST NATIONAL BANK.

(Copy.)

\$25,000.00.

RICHMOND, VA., *Octo. 16, 1900.*

On demand, and upon return of securities given, the Wm. R. Trigg Co. promises to pay to the First National Bank of Richmond, Va., or order, twenty-five thousand dollars, negotiable and payable at the First National Bank, Richmond, Va., value received, having deposited with the said bank as collateral security contracts for revenue cutters #7 & 8.

If the market value of said securities, or of any hereafter deposited therewith, or of the remainder after the application of any part thereof to any other note or claim, shall at any time be less than per cent beyond the amount of this note and interest, the said bank shall have the right, until this note be paid, to retain and apply any money, collaterals, security, or property of of any kind, that it may then have or thereafter acquire, to make good the deficiency.

In case of the nonpayment of this note, according to its terms, hereby authorize said bank to sell said collaterals, securities or property, and to apply the aforesaid money and the net proceeds of such sale to the payment of this note and interest thereon; such sale to be made at the bank's *opinion*, without notice, at the board of brokers or at public or private sale. Any amount which may then remain due hereon promise to pay to said bank, forthwith after such sale, with legal interest.

It is further agreed, that said collaterals, or any excess in the value thereof, or any surplus from the sale thereof, beyond the amount due hereon, shall be applicable upon any other note or claim held by said bank against , and for that purpose may be sold in the manner above stated; and if said bank hold no other note or claim against such surplus, after payment of this note, shall be returned to , and in case of any exchange of or addition to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals.

It is also understood that upon any sale of any of said collaterals, said bank may become the purchaser thereof and hold the same thereafter in its own right, absolutely free from any claim of

542 (Signed) WILLIAM R. TRIGG COMPANY,

By LILBURN T. MYERS,

(\$5.00 U. S. Rev. stamp cancelled.)

Vice-President.

EXHIBIT No. 6—FIRST NATIONAL BANK.

(Copy.)

\$5,070.

RICHMOND, VA., *April 29, 1901.*

On demand, and upon return of securities given, we promise to pay to the First National Bank of Richmond, Va., or order, five thousand & seventy 00/100 dollars, negotiable and payable at the First National Bank, Richmond, Va., value received, having deposited with the said bank as collateral security contract on revenue cutters Nos. 7 & 8.

If the market value of said securities, or of any hereafter deposited therewith, or of the remainder after the application of any part thereof to any other note or claim, shall at any time be less than per cent beyond the amount of this note and interest, the said bank shall have the right, until this note be paid, to retain and apply any money, collaterals, security, or property of of any kind, that it may then have or thereafter acquire, to make good the deficiency.

In case of the nonpayment of this note, according to its terms, hereby authorize said bank to sell said collaterals, securities, or property, and to apply the aforesaid money and the net proceeds of such sale to the payment of this note and interest thereon; such sale to be made at the bank's option, without notice, at the board of brokers or at public or private sale. Any amount which may then remain due hereon promise to pay to said bank, forthwith after such sale, with legal interest.

It is further agreed, that said collaterals, or any excess in the value thereof, or any surplus from the sale thereof, beyond the amount due hereon, shall be applicable upon any other note or claim held by said bank against , and for that purpose may be sold in the manner above stated; and if said bank hold no other note or claim against such surplus, after payment of this note, shall be returned to , and in case of any exchange of or addition to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals.

543 It is also understood that upon any sale of any of said collaterals, said bank may become the purchaser thereof and hold the same thereafter in its own right, absolutely free from any claim of

(Signed)

WILLIAM R. TRIGG COMPANY,
By LILBURN T. MYERS, V. P.

(\$1.02 U. S. Rev. stamp cancelled.)

EXHIBIT No. 7—FIRST NATIONAL BANK.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, October 17, 1900.

Mr. J. B. PURCELL,
*Vice-President, First National Bank,
Richmond, Virginia.*

DEAR SIR: Replying to your communication of the 16th instant, in relation to the draft for \$23,500, being a partial payment on account of the construction of the new revenue steamer for the Great Lakes (No. 7, R. C. S.), I have to say that the power of attorney referred to by you was duly received in the Division of Revenue Cutter Service, as stated in your letter, and the same was filed with the accounting officers of the Treasury Department for their information.

When the bill was approved and referred to the auditor for settlement, the request was made that the draft be sent direct to the First National Bank of Richmond, Virginia. The neglect to do so was not the fault of this office, but was an oversight in the office of the Treasurer U. S. from which the draft was mailed.

In future payments, I will cause the draft to be sent to this division, and will see that it is mailed to the First National Bank agreeably with your request.

The enclosures submitted with your letter are respectfully returned.

Respectfully, yours,

C. W. SHOEMAKER,
Captain R. C. S., Chief of Division.

544

EXHIBIT No. 8—FIRST NATIONAL BANK.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY.
Washington, October 19, 1903.

Mr. VIRGINIUS NEWTON,
*President, First National Bank,
Richmond, Virginia.*

SIR: In reply to your letter of the 16th instant, asking for a copy of a letter of acknowledgment to your communication of May 12, 1900, transmitting to the department power of attorney from the William R. Trigg Company, of Richmond, authorizing the First National Bank at that place to collect all payments to become due to said company from the United States Government, under contract made April 20, 1900, for the construction of two revenue cutters, viz, No. 7 and No. 8, R. C. S., you are informed that the records of the department show the above mentioned communication to have

been received at the department May 14, 1900, but its receipt does not appear to have been acknowledged.

Respectfully,

R. R. ARMSTRONG,
Assistant Secretary.
H. S. M.

Virginia :

In the Chancery Court of the City of Richmond, the 16th day of May, 1904.

S. H. HAWES & COMPANY, PLAINTIFFS,	} In Chancery.
v.	
WILLIAM R. TRIGG COMPANY ET ALS., DEFENDANTS.	

This cause came on this day to be again heard upon the papers formerly read, and upon the report of Lilburn T. Myers, receiver of the court in this cause, dated May 9th, 1904, and this day filed (which report for convenience of reference is marked "Receiver's Report No. 54") and the papers returned therewith; and was argued by counsel.

On consideration whereof, it appearing to the court that at the time of the appointment of the receiver in this cause there remained a balance unpaid by the United States to the William R. Trigg

545 Company upon the contract price of the United States revenue cutter "Mohawk," under contract to be built by said company for the United States, the sum of sixty-seven thousand five hundred and sixty-three dollars, and in addition thereto the sum of thirty-two hundred and sixty-nine dollars and ninety-eight cents on account of certain changes in the original contract, ordered by the United States, making the total balance due the said company of seventy thousand eight hundred and thirty-two dollars and ninety-eight cents, provided the said vessel should be completed by the said company according to the plans and specifications of said contract; and it further appearing that after the filing of the stipulation by the United States in this cause for the delivery to it of said vessel and the material applicable to its completion and after the delivery to the United States of the said vessel and material, the United States contracted with the Smith-Courtney Company for its completion at the price of thirty-nine thousand five hundred and ninety-eight dollars; and it further appearing that the Smith-Courtney Company claims from the United States the further sum of forty-five hundred and twenty-nine dollars and sixty-three cents, alleged to be due it for additional work expended in remedying certain imperfect work performed by the William R. Trigg Company upon said vessel, and that the United States proposes to deduct this said sum of forty-five hundred and twenty-nine dollars and sixty-three cents from the said balance due by the United States to the William R. Trigg Company; and it further appearing that nearly the entire balance due to the William R. Trigg Company as aforesaid, after deducting therefrom the said sums of thirty-nine

thousand five hundred and ninety-eight dollars and forty-five hundred and twenty-nine dollars and sixty-three cents would be absorbed in discharging the penalty for delay in completing the contract if the said penalty were enforced by the United States against the William R. Trigg Company; the court, adopting the recommendation of the said receiver contained in said report, for the reasons stated therein, doth adjudge, order, and decree that the said receiver be, and he hereby is, authorized to collect from the United States the balance of twenty-six thousand seven hundred and five dollars and thirty-five cents, being the said sum of seventy thousand eight hundred and thirty-two dollars and ninety-eight cents, less the sums of thirty-nine thousand five hundred and ninety-eight dollars and forty-five hundred and twenty-nine dollars and sixty-three cents, in full pay-

546 ment of the balance due by the United States to the William R. Trigg Company or the said receiver on account of said balance due on said contract, and the said receiver is authorized to give to the United States, or the Secretary of the Treasury, a full receipt and acquittance in the premises upon the payment to him of the said sum of money.

The said receiver shall deposit the said sum of money when collected in the First National Bank of Richmond, Virginia, to bear interest at the rate of three per centum per annum, to the credit of the court in this cause; and the sum so deposited will be retained by this court undistributed until all the rights and equities of all parties to this suit claiming any rights, liens, or equities in or in respect to said fund shall have been finally ascertained and established, and until all controversies now existing, or which may hereafter arise, which can affect the disposition of said fund, shall have been finally adjudicated.

I, Charles O. Saville, clerk of the Chancery Court of the city of Richmond, hereby certify that the foregoing is an additional transcript of so much of the record as was ordered by counsel, and that notice in obedience to section 3457, Code of Virginia, has been duly given.

CHAS. O. SAVILLE, *Clerk.*

Fee for record, \$8.00.

A copy—Teste:

H. STEWART JONES, *C. C.*

547 *Addendum to record in S. H. Hawes & Co. v. Wm. R. Trigg Co., et als.*

WASHINGTON, May 14, 1903.

GENTLEMEN: By the eighth clause of the contract, dated December 14, 1899, of the William R. Trigg Company for the construction of protected cruiser No. 17, the "Galveston," it was stipulated that said vessel should be completed and ready for delivery within thirty months thereafter, and it was further provided in the twelfth clause of said contract that in case of the failure or omission of the party of

the first part at any stage of the work prior to its completion from any cause or causes other than those specified in the eighth clause to go forward with the work and make satisfactory progress toward its completion within the prescribed period, it should be optional with the Secretary of the Navy to declare the contract forfeited.

The time limited by the contract for the construction of the "Galveston" has, at the request of the contractors, been extended several times, but the vessel is, owing to causes other than those specified in the eighth clause of the contract, not complete and ready for delivery as required, and the receiver for the William R. Trigg Company has failed, since said company's affairs were placed in his hands as such receiver to proceed with the work, and is unable to assure the department satisfactorily that the construction of the vessel will be resumed under his direction.

In view of the foregoing, and as the public interests require this vessel to be completed without unavoidable delay, the contract therefor, above mentioned, is hereby in accordance with the provisions thereof declared to be forfeited on the part of the contractors and their receiver, and the rights of the United States under the
548 contract, and especially under the twelfth, thirteenth, and fourteenth clauses thereof are now operative.

The department will as soon as practicable appoint a board of five members to take a full and complete statement and inventory of all work done or commenced in, upon, or about said vessel, and all materials on hand applicable thereto, the property of the contractors, and to examine such work and materials and ascertain and declare the fair market value thereof, including a reasonable and customary margin of profits upon so much of the work as has been satisfactorily performed, the contract price plus extras being taken as the fair market value of the completed vessel, before which board the contractors and the receiver are to have the privilege of making representations as stipulated in the twelfth clause of the contract.

Under the provisions of the twelfth clause of the contract repayment is requested of \$698,514.45, the sum of the payments heretofore made by the Government under the contract on account of work done and materials furnished up to this date.

The bureau of Construction and Repair and Steam Engineering have been instructed to direct their representatives at the works of the contractors to take possession of said vessel and all materials on hand, and to keep the same under their charge until further orders.

Very respectfully,

CHAS. H. DARLING,
Acting Secretary.

WILLIAM R. TRIGG COMPANY,
Richmond, Va.

MR. LILBURN T. MYERS,
Receiver for William R. Trigg Company, Richmond, Va.

THE VIRGINIA TRUST COMPANY,
Richmond, Va.

S. H. Hawes & Co.

v.

WILLIAM R. TRIGG COMPANY & ALS.

Receiver's report No. 16.

To the Hon. DANIEL GRINNAN, judge of the Chancery Court of the city of Richmond, Va.:

549 Your undersigned receiver of the court in this cause respectfully represents that he is in receipt of a letter from the Acting Secretary of the United States Navy dated May 14, 1903, stating that the Navy Department has declared the contract for the building of the cruiser "Galveston" forfeited in accordance with the terms of said contract, and further stating that the representatives of the Government at Richmond have been instructed to take charge of the vessel and all materials in the yard purchased for use in said vessel, with a view to removal to the Norfolk Navy-Yard, at Norfolk, Va., for completion. A copy of the said letter, together with a copy of the "Galveston" contract is herewith returned for the information of the court.

In pursuance of the purposes expressed in this letter government watchmen have already been placed on board of the vessel, and I am informed that the government officials are arranging for the prompt shipment of the said materials from the company's yard to Norfolk.

Your receiver reports these facts for the information of the court and asks the court's instructions in the premises.

Respectfully submitted.

LILBURN T. MYERS, Receiver.

RICHMOND, VA., May 15, 1903.

(Front.)

(Copy.)

United Railroads of New Jersey Division.

No. 17224.

Pennsylvania Railroad Company to

William R. Trigg Co.

Dr. Address: Richmond, Va.

Mem. No. W. W. A. D. S. N.

This voucher is payable in current funds at the Philadelphia National Bank, of Philadelphia, when receipted in accordance with the directions below, printed in red ink.

550

1902.

Dollars. Cts.

Aug. 26. For estimate No. 1 for new tugboats "Bristol" and "Chester" for New York Division as per contract dated June 30, 1902-----

\$10,000.00

Invoice No. 273.

Penna. R. R. Co. Paid Sept. 16,
1902. Treasurer's office. S. P.
No. 2.

The Phila. Natl. Bank. Paid
Sept. 15, 1902, Phila., Pa.

I certify that the above is a true copy of an original account authorized and approved by purchasing agent and filed in the office of auditor of disbursements; that the same has been examined by me, found correct, and is hereby approved for payment.

(Sig.) F. M. BISSELL,
For Comptroller.

Examined, found correct, and registered.

(Sig.) J. D. GREENE,
Auditor of Disbursements.

Received, , 190 , of the treasurer of the Pennsylvania Railroad Company ten thousand dollars, in full of the above account.

WILLIAM R. TRIGG COMPANY,

By (Sig.) LILBURN T. MYERS, *Vice-President.*

Read this: The above receipt must be dated and signed by the party in whose favor this voucher is made; or, when signed by another party, the authority for so doing must accompany it. A firm name must be signed by a member of the firm, and the name of a corporation must be signed by an officer of the corporation officially, with the name of the corporation and title of officer.

(Back.)

(Copy.)

551 Payable at the Philadelphia National Bank, Philadelphia, Pa.

(Copy.) No. 17224. Wm. R. Trigg Co. for August, 1902. \$10,000.

(Copy.) Pay any bank or banker city bank—Richmond, Va. J. W. Sinton, cashier.

United Railroads of New Jersey Div. Pennsylvania Railroad Company, Philadelphia, Pa.

Received payment, Sept. 15, 1902. 44. Through clearing house.

(Copy.)

No. 5020. William R. Trigg Co. Date July 7, 1902.

Richmond, Va.

This order is for P. R. R. Co. tugs. Hull No. 20 & 21, Eng. Department.

To SAYES & SCHULTZ, *Philadelphia, Pa.*

Please enter our order for the following, and state in acknowledgment when shipment will be made:

No. pieces.	Size.	Length.	Article.	Material.	Ref. No.	Plan No.	Title of plan.
4	3'—7	1/2'' dia.	x 3/4'' thick sheets	pure gum	#201061	E. con-	denser.

552 These to be as per sketch on our order #2818—1-18-02.
Subject to P. R. R. Co.'s inspection.

LILBURN T. MYERS,
Vice-President.

Important! Ship care of our storekeeper, Richmond, Va.
Render invoices in triplicate—one without prices.
Show on each invoice order No. given above.
Send bill lading with freight rate shown. T. E. H., order clerk.

I, Charles O. Saville, clerk of the Chancery Court of the city of Richmond, hereby certify that the foregoing are additional copies of so much of the record as were selected and directed by counsel.

CHAS. O. SAVILLE, *Clerk*.

March 11th, 1909.

A copy—Teste:

H. STEWART JONES, *C. C.*

553

STAUNTON, VA., Sept. 9, 1909.

S. H. HAWES & COMPANY ET ALS.
v.

WILLIAM R. TRIGG COMPANY ET ALS.

} Opinion by James Keith,
president.

Chancery Court of city of Richmond.

The William R. Trigg Company, a manufacturing corporation, organized under the laws of this State, and engaged in the construction, building, and equipment of ships, boats, and vessels, on June 1, 1901, executed a deed of trust to the Commercial Trust Company of Philadelphia, as trustee, covering its plant, and including all its machinery, fixtures, and tools, together with all corporate rights, privileges, and franchises, and on June 14, 1902, another deed of trust to the Richmond Trust and Safe Deposit Company to secure large issues of its bonds; it contracted also large debts to its employes and for supplies and material; and having become greatly embarrassed,

554 S. H. Hawes & Co., in December, 1902, filed their bill setting forth its default in the payment of interest upon the bonds secured by the deeds of trust, averring its heavy indebtedness to banks and individuals upon promissory notes and open accounts, its total insolvency, and praying for the appointment of a receiver to take charge of its assets and to finish certain uncompleted contracts theretofore entered into by it.

Under this bill such proceedings were had that a receiver was appointed and the cause was referred to a commissioner to state an account showing the property of the company and its value, the debts due by it, the liens and their priorities. Bank v. Trigg Co., 100 Va., 327.

The question now to be disposed of grows out of the following facts: The Trigg Company, appellee, on the 20th of April, 1900,

contracted with the United States Government for the construction of revenue cutters Nos. 7 and 8, known as the "Tuscarora" and the "Mohawk." Certain payments were to be made as the work progressed, but not less than twenty-five per cent. of the contract price was to be reserved by the Government until the completion and final acceptance of the vessels. The payments so reserved are known in the record as the "Reserved claims." There was no provision in the contract itself prohibiting its assignment.

The Trigg Company applied to the First National Bank of Richmond, Va., for loans to enable it to execute this contract, and received \$25,000 on April 26, 1900, filing its contract with the bank, but making at that time no written assignment. On May 11, 1900, the board of directors of the company passed a resolution authorizing the execution of a power of attorney to the bank to collect all payments under its contracts with the Government for the construction of the revenue cutters. This power of attorney was duly executed on that day, and was sent by mail to the Secretary of the Treasury on May 12, 1900.

Other loans from the bank were negotiated by the Trigg Company upon the faith of the contracts with the United States Government for the construction of the two cutters, so that the debt due to the bank was in the end represented by three notes, one of April 29, 1900, for \$5,070, subject to a credit of \$3,034 as of the 30th day of September, 1902; a note of October 16, 1900, for \$25,000; and a second note of October 16, 1900, for a like amount.

The "Tuscarora" was completed, accepted, and paid for by the Government, and makes no figure in this case. The "Mohawk" was completed after the appointment of the receiver, and on May 16, 1904, the sum of \$26,705.35 was paid by the Government into court to the credit of this cause in full settlement of the amount due to the Trigg Company for the construction of that vessel.

In obedience to the decree of the chancery court, the commissioner returned his report, from which it appears that many liens for supplies, material, and labor were perfected and filed against the "Mohawk." None of them are of an earlier date than December, 1902, while the First National Bank of Richmond claims under assignments none of which are later than October, 1900.

The commissioner reported in favor of the supply and labor liens, and to that report the bank excepted, as follows:

"First. Because said commissioner finds that the assignment by said W. R. Trigg Company to said bank of its the said Trigg Company's claim against the United States, arising out of its contract to build for said United States the revenue cutter "Mohawk," and the power of attorney to said bank to collect the reserve held to await the completion of said cutter are void under section 3477, Revised Statutes of the United States; and even if not so void, the general claim of said bank as well as said assignment and power of attorney are subordinate to all liens duly acquired for labor and supplies furnished the said W. R. Trigg Company under the terms of the Virginia statute, code of Virginia, section 2485.

“Second. Because the findings of said commissioner sustain the constitutionality of the labor and supply lien law of Virginia, whereas said law is in conflict with section 1 of Article Four-
558 teen of the Constitution of the United States, and with the constitution of Virginia.

“Third. Because said commissioner finds that the said W. R. Trigg Company is a ‘manufacturing company,’ within the meaning and operation of said Virginia labor and supply lien statute, whereas he should have found that the said statute did not apply to such a company.”

The second and third exceptions are disposed of by the opinion of this court in *Bank v. Trigg Co.*, supra, where the constitutionality of section 2485 was maintained; the Trigg Company was held to be a manufacturing company within the meaning of that section; and the liens for labor and supplies were sustained; but the decree appealed from, in that case, reserved for future consideration “all ques-
559 tions as to the validity or priority of any claim or lien of any party to the cause, so far as such claim or lien exists in relation to any property of the defendant corporation other than the real estate conveyed in said two mortgages and the rights appurtenant thereto, and the personal property forming a part of its
plant * * * and all questions as to the fund or funds upon or against which the amounts herein ordered to be paid on account of labor liens or mechanics’ liens established in this cause shall be eventually charged.”

The precise question, therefore, now to be decided is as to the priority of right between the First National Bank, claiming under the assignments above referred to, and the subsequent liens for labor and supplies.

As we have observed, the validity of the liens was established in *Bank v. Trigg Co.*, supra, and must prevail, unless the bank, claiming under the assignments, shall be found to have the older and the better right.

We are of opinion that the transaction between the bank and the Trigg Company by which the contracts with the United States Government were filed with the bank and a power of attorney was executed by the Trigg Company, authorizing the bank to collect all payments under its contracts with the Government for the
560 construction of the revenue cutters, on the faith of which the bank made loans to the Trigg Company, constituted, under the laws of this State, valid assignments or hypothecations of those contracts. *Didier v. Patterson*, 93 Va., 534; *Building Association v. Coleman*, 94 Va., 433; *Hicks v. Roanoke Brick Co.*, 94 Va., 741; *Switzer v. Noffsinger*, 82 Va., 518; *Mack Mfg. Co. v. Smoot*, 102 Va., 724.

“Words which show an intention of transferring or appropriating a chose in action to or for the use of another, if based upon a valuable consideration, will, in contemplation of a court of equity, operate as an assignment.” *Tatum v. Ballard*, 94 Va., 370.

We think it plain, therefore, that the dealing between the bank and the Trigg Company constituted an assignment, valid under Virginia law, and if the right of the bank is to be defeated it is by virtue of section 3477 of the Revised Statutes of the United States, which is as follows:

561 "All transfers and assignments made of any claim upon the United States, or of any part or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

562 After consideration of this statute and numerous decisions of the Supreme Court of the United States, which he discusses in his very instructive report, the commissioner in chancery was of opinion that the assignment to the bank was void, and his finding was sustained by the decree of the chancery court.

It is admitted that the assignment relied upon by the bank is not in accordance with the terms of section 3477. The contention of the bank is, that the act was passed, as its preamble states, to prevent frauds upon the Treasury of the United States, and that by a proper construction, it avoids all transfers and assignments of claims upon the United States at the option and election of the Government of the United States; but that, in this case, the Government having seen fit to deposit the amount due upon its contract with the receiver of the court, and having received a full acquittance of all claims and demands growing out of the contracts which were assigned to the bank, has washed its hands of the whole transaction and left

563 the rights of the parties to be ascertained and decided in accordance with the State, unaffected by section 3477 of the Revised Statutes, the final analysis of the position of the bank being as follows: The transaction between the bank and the Trigg Company is valid as an assignment between the parties; it was made in the legitimate course of business, in good faith, to secure an honest debt, is opposed to no public policy, and is not within the mischief which was sought to be remedied by section 3477.

The language of that section, if construed literally, would annul all transfers and assignments; but the Supreme Court has held in numerous cases that such was not its effect. It does not apply to transfers of title by operation of law, as, for example, the passing

of claims to heirs, devisees, or assignees in bankruptcy (*Erwin v. U. S.*, 7 Otto., 392), but only to voluntary assignments of demands against the Government, nor does it include a voluntary assignment made by an insolvent of all his effects for the benefit of his creditors (*Goodman v. Niblack*, 102 U. S., 556); and in the latter case 564 the court said that a careful examination of the entire statute leaves no doubt that its sole purpose was to protect the Government and not the parties to the assignment.

In *Bailey v. United States*, 109 U. S., 432, Mr. Justice Harlan said that the statute in question is not to be interpreted according to the literal acceptation of the words used; and further on in the opinion says that "A mere power of attorney given before the warrant is issued—so long at least as it is unexecuted—may undoubtedly be treated by the claimant as absolutely null and void in any contest between him and his attorney in fact. And it may be so regarded by the officers of the Government whose duty it is to adjust the claim and issue a warrant for its account. But if those officers choose to make payment to the person whom the claimant, by formal power of attorney, has accredited to them as authorized to receive payment, the claimant can not be permitted to make his own disregard of the statute the basis for impeaching the settlement had with his agent."

In *Price v. Forrest*, 173 U. S., 410, the facts were as follows: 565 Price, a fiscal agent of the United States, advanced \$75,000 to his successor for public uses. This money not being returned, Price asserted claim against the Government. In 1857 Forrest got judgment against Price, and in 1874 Forrest's widow brought suit to enforce this judgment. In 1891 Congress passed an act for the relief of Price, and in 1892 \$76,204.08 was awarded him. A portion of this money was actually paid, and Forrest's widow then obtained a decree requiring Price to deliver Government drafts for the balance to a receiver. In consequence of this suit, the Government officials held back enough to satisfy the judgment of Forrest against Price pending the litigation in the state courts. The state court held that it had jurisdiction under the laws of the State, and as between the parties before it, to put into the hands of its receiver any chose in action of whatever nature belonging to Price and of which he had possession or control. Upon these facts, Mr. Justice Harlan, delivering the opinion, said: "While the present case differs from any former case in its facts, we think that the principle announced 566 in *Erwin v. United States*, and *Goodman v. Niblack*, justified the conclusion reached by the state court. That court held that it had jurisdiction under the laws of the State, and as between the parties before it, to put into the hands of its receiver any chose in action of whatever nature belonging to Price and of which he had possession or control. The receiver did not obtain from Price in his lifetime an assignment of his claim against the United States. But having full jurisdiction over him the court adju'dged that as between Price and the plaintiffs who sued him, the claim should not be disposed of him to the injury of his creditors, but should be placed in

effect that upon the completion of the hull and propelling machinery the vessel should be given a sea trial. This provision has been set forth on a former page of this brief, and upon referring to it it will be seen that it provides that such defects as might develop upon the prescribed tests being made were to be *made good*, and that these tests, if necessary, should be *repeated until the vessel was "found satisfactory in all respects."* The Government, naturally, reserved the right to finally inspect the vessel before accepting it, but the contract says nothing, expressly or impliedly, about the right of the Government to reject the vessel as a whole, but rather negatives such an idea. The Government would have the right, as already suggested, to withhold the balance of the money due upon the vessel until any defects that might appear upon final inspection or trial were satisfactorily made good, but that is a very different thing from having the right to reject the vessel out and out and to say that no title thereto had passed from the builder.

But if there had been an absolute right of rejection the effect of exercising it would have been, simply, to leave the vessel on the builder's hands, and with it, of course, the title that had vested in the United States as "the parts" were paid for. It would have been like the ordinary case of a sale of a chattel, with the understanding that if, after a trial, the purchaser is not satisfied with it, the seller will take it back.

There is, to be sure, a provision in the fourth clause of the contract which gives the right to annul the

contract (Record, 407), but, upon examining its language, it will be seen that it entirely harmonizes with the idea of title passing under the previous "ownership" clause of the contract, and of itself goes far to negative the contrary view. It provides, in case of the annulment of the contract, that the vessel shall be *completed by the Government*, saying nothing about title, and evidently for the reason that the parties considered that in such a case the part or parts of the vessel that might have been paid for had "become thereby the sole property of the United States."

There is a somewhat similar provision in the *Galveston* contract, giving the Secretary of the Navy the right, in his discretion, to declare the contract forfeited and to complete the vessel. But as there was no previous stipulation in the contract for title to pass in advance of the completion of the vessel, the parties were careful to provide in express terms that, upon certain steps being taken after the annulment of the contract, the title to the unfinished vessel, and the materials on hand applicable to her construction, should forthwith vest in the United States. (Record, 237-8.)

Ordinary prudence would have prompted the parties to have inserted a similar provision in the *Benguard* contract had they not supposed it to be unnecessary, in view of the stipulation in the "ownership" clause.

Another ground of the decision of the court below is the provision in the contract requiring the Trigg

Company to give bond with security for its faithful performance of the contract.

When, however, the circumstances of the case are considered—that is, the amount that the United States were to pay under the contract, viz, \$254,555, and the amount of the bond required by the contract, viz, \$60,000—it would seem clear that no inference adverse to the Government's view of the case can be rightly drawn from this feature of the contract. The very great disparity between the price to be paid and the amount of the bond shows that the bond was not required as a security for the payments that were to be made during the progress of the work, and that no larger bond was required, because it was considered that the Government would be protected by taking *title to the thing* for which the payments were to be made. The bond was no doubt required in order to secure the Government against any damage that might be sustained by reason of failure on the part of the contractor to do the work within the prescribed time or in a proper manner, as, in any other view of the case, the bond was certainly very inadequate security.

In *Clarkson v. Stevens* the security required was a mortgage upon "very valuable" property (29 N. J. Eq., p. 607), and the contract expressly stated that the payments were made, or rather to be made, in consideration of that security, which was ample to cover any loss that the Government might sustain on account of its *payments or otherwise*.

Among the cases chiefly relied upon by the court below in support of its conclusion are: *Andrews v. Durant*, 11 N. Y., 35; *Williams v. Jackman*, 16 Gray, 514; *Briggs v. A Light Boat*, 7 Allen (Mass.), 287; and *Clarkson v. Stevens*, 106 U. S., 505.

The first-mentioned case merely holds that under shipbuilding contracts payments in installments as the work progresses, coupled with a provision for the doing of the work under the superintendence of the vendee or his agents, are not circumstances which of themselves conclusively indicate an intention for title to vest in the vendee before completion of the vessel.

In *Williams v. Jackman* there was no provision in the contract for payments at specified stages of the work, or for the work to be done under the superintendence of the purchasers or their agent; so that, as the court said, the case was clearly distinguishable from *Woods v. Russell* and other English cases cited in the argument.

The *Briggs* case was in several of its essential features like *Williams v. Jackman*, and it was accordingly held that title did not pass from the builder, the conclusion being based upon these grounds: (1) The fact that the price was not to be paid in installments at specified stages of the work; (2) the fact that there was no absolute agreement by the United States (the proposed purchaser) to appoint a superintendent of the work; and (3) the provision in the contract giving the United States the right, if the contract was not duly complied with

or if the builder should be negligent and careless, to declare the contract forfeited. It will be observed, however, that there was no provision in the contract in that case, as there is in the contract in the present case, to the effect that, in the event the contract was declared forfeited, the work should be completed by the United States; so that there, in case the contract was declared forfeited, that was the end of the matter, except, of course, as the contract stated, the builder was to remain liable to the Government for damages for his noncompliance with the contract. The present is a very different case.

And not less in point is *Clarkson v. Stevens*. In that case the circumstances were peculiar. There the contract was for the construction of a ship, described as a war steamer, shot and shell proof, which was to be constructed upon an original and novel plan, and which the contractor succeeded in persuading the Government to allow him to undertake as an *experiment*. Of course, therefore, there was in the contract no express agreement for title to pass during the progress of the work, nor was there any agreement for payments to be made at particular stages of the work, or for the work to be done under the supervision of an inspector with authority to judge of the quality and fitness of the materials and workmanship. The contract, moreover, contained a number of features which were mentioned by the court as clearly indicating an intention that title was not to pass until the vessel had been completed and accepted.

One of these was the expressly limited authority of the inspecting officer of the Government in the particular just mentioned. Another was the provision which required Stevens, in lieu of other security for his faithful performance of the contract, to execute and deliver a mortgage on all the land, docks, wharves, slips, and all their appurtenances embraced within the establishment at Hoboken, N. J., at which the ship was to be constructed, with power on the part of the United States to enter upon and sell the same in case of his failure to fulfill the contract, which property, as we have seen, was "very valuable;" it being also *expressly stated in the contract that any advances made during the progress of the work would be made in consideration of this mortgage security.*

And although the contract provided that all materials received at the yard for use in constructing the ship should be marked with the letters "U. S.", and should become the property of the United States, yet it did not follow that they were intended to remain so after becoming part of the structure. The court observed that such a precaution might well have been suggested as a security against a diversion of the materials to any unauthorized use, or to preserve them for the United States in case, by reason of the failure of the work, or from any other cause, they should not be used in the vessel, and, furthermore, that the express declaration that defined the property in the unused materials excluded the implication sought to be raised as to the property in the unfinished ship, the inference being obvious, from the

particularity of such a provision, that the larger interest would not be left to mere intendment.

And lastly, and as conclusive of the matter, the situation of the parties and the objects they had in view were adverted to. Upon this point Mr. Justice Matthews said:

Stevens was an ardent and sanguine inventor, who had convinced himself that his unique design of a naval structure was practical and of great value, and that if adopted it would prove to be of immense public utility. He succeeded also in persuading the Government to make the experiment, and to give him the opportunity of realizing his theories. But it was understood to be merely an experiment, and evidently by the Navy Department, naturally conservative and inclined to adhere with some tenacity to its own traditions, regarded, at best, as of very doubtful success. The steamer when built was to constitute a part of the naval establishment of the United States. Can it be supposed that this was to take place except upon condition that, after completion and sufficient examination, it should be found fit for the service? This is the view, as it seems to us, which Congress, by its legislation, and the Navy Department, in all its dealings with the subject, constantly entertained and acted upon, and which both Robert L. Stevens and his brother, Edwin A. Stevens, did not hesitate to accept, the latter not shrinking from a further investment of \$1,000,000 in an enterprise which he still cherished with confidence of ultimate success,

after it had become to almost everyone else a demonstrated failure, and after the Government, for whom it was originally intended, had refused to it all further subsidies.

In the present case the Government was dealing not with a visionary, or with "an ardent and sanguine inventor" for a novel structure, but with a corporation, and for the construction of a simple dredge for the War Department; and in every essential feature the case differs from the case before this court when *Clarkson v. Stevens* was decided.

The truth is that, upon the facts of that case, the contention therein that title was intended to pass in advance of the completion of the work, could not have been maintained upon the doctrine of *Woods v. Russell*, or of any other reported case; and but for the general rule laid down in regard to shipbuilding contracts, the case, we respectfully submit, would have no appreciable bearing on the case now before the court.

A circumstance worthy of being mentioned as showing the practical interpretation put upon the contract in question by the Trigg Company is the fact, reported by the commissioner, that the incomplete dredge was not returned for taxation by the company. (Record, 171.)

In *Trigg Co. v. Bucyrus Co.* (104 Va., 79), a branch of the present litigation, the court below, in construing a contract similar in its essential features to the one now before the court, took a seemingly opposite view from that taken by it in the present

case. This is the case referred to in the report of the commissioner (Record, 179), and is the case upon which the district attorney, in his exceptions to the report, raised the question of *res judicata*. (Record, 209, 211.) The contract construed in that case was the contract, to which reference has already been made, between the United States and the Trigg Company for supplying and installing the pumping machinery for the dredge. The Government agreed to pay for the work the sum of \$32,050, and the provisions of the contract, material to the present case, were these (*italics ours*):

That the Trigg Company should "be responsible for and pay all liabilities incurred in the prosecution of the work for *labor and materials*."

That "*until final inspection and acceptance of, and payment for,*" all the material and work provided for, no prior inspection, payment, or act should be construed as a waiver of the right of the United States to reject any defective work or material, or to require the fulfillment of any of the terms of the contract.

That payments would be made as set forth in the sixty-fourth paragraph of the specifications, which were made part of the contract, that paragraph being in these words:

Payment.—When the pumping machinery is delivered complete at the point where it is to be installed a payment will be made of one-third of the contract price; a second payment of one-third of the contract price will be paid when the machinery is completely installed;

and the remainder of the contract price will be paid after thirty days' trial, as above described, *if found satisfactory in all respects.*

Then follows the paragraph in regard to "ownership" in these words:

Ownership.—All parts paid for under the system of partial payments above specified shall become thereby the sole property of the United States, *but this provision shall not be interpreted as relieving the contractor from the sole responsibility for the proper care and protection of said parts prior to the delivery of the dredge to the United States, or from any other provisions of these specifications.* The contractor shall at his own expense properly store and care for the pumping machinery during the period, if any, between delivery and installation.

It will thus be seen that essential features of the two contracts are largely couched in identical language.

A few days after the making of the pumping machinery contract, the Trigg Company contracted with the Bucyrus Company, a Wisconsin corporation, to furnish and install the machinery on the same terms as those set forth in its contract with the United States, and there was attached to this contract a copy of the specifications that were attached to the contract with the United States.

Shortly before the appointment of the receiver the pumping machinery was delivered complete by the Bucyrus Company at the yards of the Trigg Company in Richmond, whereupon one-third of the contract price was paid by the United States to the latter company, and by that company turned over to the Bucyrus Company, the United States not being a party to the contract between the two companies. No further payment was made. Upon his appointment the receiver took possession of the machinery as part of the assets of the Trigg Company, and, along with the unfinished dredge, it was subsequently, after the filing of the stipulation by the district attorney, delivered under a decree of the Chancery Court to the agents of the Government.

Two questions arose in the case, viz: (1) What interest, if any, did the United States acquire under the contract in the pumping machinery, and (2) what were the rights of the Bucyrus Company in respect thereto?

The latter company, not denying that the United States, by its above-mentioned payment, acquired a one-third interest in the machinery, contended that the machinery was delivered by it to the Trigg Company, not as a purchaser, but as a bailee, and consequently that it (the Bucyrus Company) had a two-thirds interest therein; that to that extent title from it to the machinery had never passed. On the other hand, certain creditors of the Trigg Company (the appellees here) *denied that title to the machinery*

vested to any extent in the United States, or that the machinery had been delivered to the Trigg Company as a bailee.

The Supreme Court of Appeals unanimously overruled the first point made by the creditors, and sustained the second. As to the first the court said: "Under the contract between the United States and the Trigg Company, all parts of the machinery paid for by the Government, under the specified system of partial payments, became thereby the sole property of the United States, and, as already pointed out, this provision formed a part of the contract of the Trigg Company with the Bucyrus Company."

It is important to add that the creditors further contended in that case that if any title vested in the United States, it was nevertheless subject to their claims, because the contract between the Government and the Trigg Company was not recorded as required by section 2465 of the Code of Virginia. As to this the court said a sufficient answer was that, as no title was reserved in the contract on the part of the Trigg Company, the intention being that upon payment absolute title was to pass to the United States, the contract did not come within the category of contracts which are required to be recorded by the recordation statute. (Code, sec. 2465; 104 Va., 79, 87, 88.)

The latter remark equally applies to the present case, if title to the dredge passed to the Government, apart from any question as to the Government's

being exempt from the operation of the statute because of its sovereignty.

Two of the judges dissented in the present case in regard to the dredge, saying: "The contract of the William R. Trigg Company with the Government expressly provides that the Government shall take title to the *Benyuard* as payment is made thereon, and there is, in our opinion, nothing in the contract to show any other or different intent. We are therefore of opinion that on this point the decree appealed from should be affirmed." (Record, 406.)

If this be the correct view; that is, if title to the dredge passed under the contract to the United States, the dredge is not subject to the supply liens in question, and the right to raise this objection was in no wise waived by entering into the stipulation upon which possession of the vessel was surrendered to the Government, since the statute (sec. 3753, R. S.) expressly enacts that "nothing herein contained shall be considered as recognizing or conceding any right to enforce by seizure, arrest, attachment, or any judicial process any claim against any *property of the United States*, or against any property held, owned, or employed by the United States, or by any department thereof, for any public use, or as waiving any objection to any proceeding instituted to enforce any such claim."

Moreover, under the state statute, supply liens can attach only to *property belonging to the debtor corporation*. (*Millhiser, & c., Co. v. Gallego Mills Co.*, 101 Va., 579, 585-6.)

II.

AS TO THE "MOHAWK."

As to this vessel, the contract, unlike the *Benyuard* contract, did not stipulate for title as the work progressed, but for a *lien* for advances made during the progress of the work.

Assuming that the registry statute of Virginia does not apply to the contract, the question in this connection is whether the contract is subject to the labor and supply lien statute; or, in other words, whether the lien reserved therein in favor of the United States is in law, as it is in point of time, prior to the supply liens in question. The advances made by the Government on account of the work, prior to the receivership, amounted to \$149,437.

The contract is dated April 20, 1900, and provided that the vessel would be completed on or before the 20th day of December, 1901; that the work would be done under the inspection and approval of superintendents appointed by the Secretary of the Treasury; that the Government might complete the vessel in case the Trigg Company failed to do so, at the cost of the latter; that the hull, machinery, etc., of the vessel would be kept insured for the benefit of the United States, and that the Government would pay for the vessel, when completed and delivered, the sum of \$217,000. The contract also contained the following:

That the Secretary of the Treasury may, in his discretion, make partial payments under this contract during the progress of the work not to exceed seventy-five (75) per cent of the

value of the labor and materials actually furnished and delivered (and not paid for) at the date of any such payment: *Provided*, That a lien shall be, and hereby is, reserved to the United States upon the hull, machinery, fittings and equipment of said vessel, and the materials on hand for use in her construction, respectively and collectively, for all moneys advanced on account thereof, and that such lien shall commence with the first payment, and shall thereupon attach to the work and the materials furnished, and shall in like manner attach from time to time, as the work progresses, and as further payments are made, and shall continue until the completion and acceptance of said vessel. (Record, 282-3-4.)

This reservation of a lien in the contract was in obedience to the requirements of the joint resolution of Congress approved May 5, 1894, which enacts as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, authorized to make partial payments, from time to time, upon existing contracts and all contracts hereafter made for the construction of vessels for the Treasury Department, but not in excess of seventy-five per cent of the amount of the value of the work already done; and that the contracts hereafter made shall provide for a lien upon such vessels for all advances so made: *Provided*, That nothing in this joint resolution shall be construed to hereafter authorize any

partial payments except on contracts stipulating for the same, and then only in accordance with such contract stipulation. (28 Stats., 582-583.)

It will thus be seen that, while a discretion is given the Secretary of the Treasury to make partial payments, the joint resolution, in respect to contracts made after its passage, wherein advances are agreed to be made, is mandatory in regard to the reservation of a lien, the language being that such "contracts hereafter made *shall* provide for a lien upon such vessels for all advances so made."

The contention of the Government is that when in such a case a lien is reserved the joint resolution operates upon it, and consequently that the lien is a statutory lien, and as such beyond the reach of state legislation. The effect is the same as if the joint resolution had declared in terms that when advances are agreed to be made there shall be a lien upon the vessel to the extent of the advances made. Hence a lien reserved in such a contract stands upon the same footing as a statutory lien for internal-revenue taxes, which in *United States v. Snyder*, 149 U. S., 210, was held not to be subject to state registry laws.

The decision of the court below upon this branch of the case rests upon three grounds, viz:

1. That the lien in question is not a statutory, but a contractual, lien;
2. That the contract for building the *Mohawk* was made with reference to the supply lien statute of Virginia; and

3. That the Trigg Company had no power to contract otherwise; that is, to contract for a lien which would be prior to liens (even though subsequently) arising under the state statute, and that the Government could take no more than what the Trigg Company could give.

As to the first point, it is said that the lien is not a statutory lien, because a joint resolution has not the effect of a statute, being merely "a rule for the guidance of the agents and servants of the sovereign;" and because the joint resolution in question simply directs a lien to be reserved in the contract, thereby contemplating a contractual lien merely.

It is perfectly obvious that the contract was made with reference to the joint resolution, and that Congress in passing the joint resolution did not contemplate that the lien directed to be reserved would be liable to be displaced or overridden by liens of any sort subsequently accruing.

As to the effect of a joint resolution of Congress, it is respectfully submitted that the court below fell into an error in that regard. In those States whose constitutions provide that no law shall be passed except by bill, or contain other similar provisions, there a joint resolution can not have the force of law, but may be said to be merely "a form of legislation chiefly for administrative purposes of a local or temporary character." (*May v. Rice*, 91 Ind., 546, 552; *Burrill v. Commissioners State Contracts*, 120 Ill., 322, 336; *Boyers v. Crane*, 1 W. Va., 176.) But the Constitution of the United States contains no such

provision. On the contrary, under that instrument a joint resolution and a bill stand upon the same footing. The Constitution, after prescribing the formalities necessary to the passage of a bill before it can become a law, provides in regard to joint resolutions as follows:

Every order, resolution, or vote to which the concurrence of the Senate or House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill. (Art. I, sec. 7.)

The reasonable conclusion from this language is that joint resolutions of Congress do not in their effect differ from bills, and when duly passed have the effect of law. Upon this subject a learned writer says:

This form of legislation is recognized in most of our constitutions, in which, and in the rules and orders of our legislative bodies, it is put upon the same footing, and made subject to the same regulations, with bills properly so called. In Congress, a joint resolution, which is the name given in that body to this kind of legislation, is there regarded as a bill. (Cush., *Law & Pr. Leg. Assemblies*, 2403.)

To the same effect is an official opinion by the then Attorney-General, dated August 23, 1854, where-

in it was held that joint resolutions of Congress are not distinguishable from bills, and that if approved by the President, or if duly passed without the approval of the President, they have the effect of law. "A joint resolution," it was said, "differs from an act of Congress only in form." (6 Op. Atty. Gen., 680.)

In *Mullan v. State* (114 Cal., 578, 585) the court said:

It is true that legislation for certain limited purposes by means of resolutions or legislative orders is in use to some extent in certain of the States and in Congress, but it will be found that in most, if not all, instances it is under a constitution which either expressly recognizes it, as does the Constitution of the United States, or one which at least does not forbid it; and it will be usually found to take the form of a resolution, requiring the assent of the executive to give it effect. In Congress this form of legislation, which is there termed a "joint resolution," is regarded as a bill, and treated with the same formalities.

It was contended in the court below that the joint resolution contemplated a contractual and not a statutory lien, because, among other things, advances are expressly authorized on contracts theretofore made in which no lien is reserved and for which no lien is created. Of course no lien was declared in respect of such contracts, and it would hardly have been competent for Congress to have done so, but that fact, it is submitted, emphasizes the intention of Congress in directing that in con-

tracts thereafter made a lien for advances should be reserved, to be in effect a statutory lien. A lien was not in terms declared by the statute, because it was doubtless thought to be well to leave it to the Secretary of the Treasury to determine whether or not advances shall be made; but when in any case advances are agreed to be made, the Secretary has no further discretion in the premises. He *must* provide in the contract for a lien, and the lien so reserved, in obedience to the mandate of the law, is to all intents and purposes a statutory lien.

Nor is the joint resolution a delegation of legislative power, as "nothing involving its expediency or just operation is left to the determination" of the Secretary of the Treasury. "The legislature can not delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend." (*Field v. Clark*, 143 U. S., 649, 693-694.) The joint resolution, then, is valid, and has the force of law, and being remedial in its nature, ought to be liberally construed. (1 Jones, *Liens*, sec. 105.)

It was also suggested on behalf of the supply lienors that, even if the lien is statutory, if the property does not pass, the lien is not prior to the supply liens. Reserving a lien on a vessel certainly does not pass the property in the vessel, but the suggestion seems to be founded on the idea that the Government is entitled to no priority of lien save where a statute expressly so provides.

It has been decided that the Government has no right to priority over private creditors in cases of insolvency and in the distribution of the estates of deceased debtors, except such as is given by the statute now carried into section 3466, Revised Statutes. But the present is an entirely different case. The lien of the Government upon the *Mohawk* is prior to the supply liens in question, not because of any prerogative right, but because the lien is prior in time; and being prior in time, it can not be divested or displaced by subsequent liens, although in the joint resolution nothing is said about the priority of the lien.

The priority of the lien in point of time was expressly declared in the decree of the Chancery Court (Record, 54) and is shown by the report of the commissioner, referred to as "Report No. 1," (Record, 141), but which, for reasons already stated, is not copied into this record. In that report the supply liens were classified, and the dates when they were filed, respectively, were stated. Both the commissioner and the Supreme Court of Appeals evidently recognized the lien of the Government as prior in point of time, but decided the case on the ground that the supply liens attached before the Government acquired *possession* of the vessel. (Record, 182, 397.)

It is submitted that the contract for building the vessel is to be read in connection with the higher law, to wit, the joint resolution, and not the state supply lien law, and that it is the former and not the latter

enactment that "enters into and becomes a part of the contract."

The court below, as showing that the contract was made with reference to the supply lien law, laid stress upon the fact that a bond with surety was given by the Trigg Company for the faithful performance of the contract, one of the conditions of which bond was that the company would promptly make payments to all persons supplying it "labor and materials in the prosecution of the work." (Record, 284.) The court speaks of this bond "as a part of the contract." (Record, 396.) This is a mistake. At least the contract says nothing about the contractor's giving bond. A bond, however, with the condition above mentioned, was given by the contractor and accepted by the Government, but, as we have said in effect in another connection, such a stipulation might well have been prompted by a desire to avoid importunity on the part of those furnishing labor and supplies to the contractor for the work, as well as to avoid possible litigation, and at the same time to provide for justice being done to a meritorious class of persons. Of course, if the lien in question is a statutory lien, the stipulation in the bond, in any point of view, can not affect the case.

But if it were conceded that the lien is, as the court below termed it, a contractual lien, would not the result be the same? Why should a lien created by contract with a head of a department, under the express authority and direction of Congress, for a public purpose, be entitled to less weight, or, in other words, any more subject to state legislation than a

lien created directly by an act of Congress, as, for example, a lien for taxes? Does not the lien in either case proceed from the same authority? Then, upon what principle can any distinction, for the purposes of the present case, be justly made between them?

As to the power of the Trigg Company in the premises, there can be no question that it had the power under its charter to contract for building the vessel, and to provide in the contract, as it did, for a lien. The contract stands on the same footing as if it had been a contract between the Government and an individual shipbuilder; and we deny the power of a State to prohibit, expressly or impliedly, one of its own citizens from contracting with the United States, for a public, national purpose, except in subordination to a state law, certainly not to the extent claimed here.

As to the power of the Trigg Company, if the Government had entered into a contract for the purchase of the yards and property of the company the contract would have been good as against creditors and purchasers without notice, although not recorded, notwithstanding, under the recordation statute of Virginia, such a contract between individuals is, without being recorded, void as against such purchasers and creditors.

In *United States v. Maurice* (2 Brock., 96) Chief Justice Marshall held that one of the most important means for carrying on the Government is contract, and that the power of the United States to contract is coextensive with the duties and powers of government. The same doctrine has often been affirmed

by this court. (*United States v. Tingey*, 5 Pet., 115; *United States v. Bradley*, 10 Pet., 343; *Jessup v. United States*, 106 U. S., 147; *Van Brocklin v. State of Tennessee*, 117 U. S., 151, 154; *Moses v. United States*, 166 U. S., 571, 586.) But if the contracts of the United States are subject in all respects to state legislation, or, in other words, if a lien in favor of the Government, subsisting by virtue of a valid contract with the Government, may be divested, postponed, or affected by the operation of a state law, the power may be rendered to a very large extent useless, and very serious embarrassment would inevitably result.

The power of the Government to contract is, not less than the power of taxation, a necessary and indispensable incident of sovereignty, and as this court said in the *Snyder case* (149 U. S., 210, 214), if the United States could, in a proceeding to collect a tax, be thwarted by a plea founded upon a state statute prescribing that such a tax must be assessed and recorded to be good as against a purchaser for value and without notice, "the potential existence of the Government is at the mercy of state legislation."

It has been truly said that, while the States are not expressly prohibited from interfering with the operations of the General Government, the inhibition comes by necessary implication, their possession of such a power of interference being in irreconcilable antagonism to the sovereign authority which it was the purpose of the Constitution to ordain and establish, and that without the recognition of such a principle

the Government would be unable to perform its constitutional functions.

The Government in the present case having contracted for a lien, which was valid when acquired, the case of *Briggs v. A. Light Boat*, 7 Allen (Mass.), 297, has no application, as there the Government contracted neither for title to the vessel before completion nor for a lien, but relied upon the personal credit of the builder. It was therefore held that certain supply liens, under the Massachusetts statute, which had attached during the progress of the work, were good as against the United States, although not enforceable after the vessel had passed into the possession of the Government. (11 Allen, 157.)

The power of a State to limit the power of a testator in respect to the disposition by will of property situate within the State (*United States v. Fox*, 94 U. S., 315), or to tax the transmission of property by will to the United States (*United States v. Perkins*, 163 U. S., 625), is not denied, but the application of the principles recognized in those cases to the present case is not perceivable, as limiting the power of disposing of property by will does not in any wise trench upon the powers of the General Government.

There are undoubtedly some cases in which when the United States contract with an individual they are, in the nature of things, controlled by the same laws that govern individuals in that behalf. Thus, when the Government rents real estate there is the same implied obligation, when the contract is silent on the point, not to commit waste, as would be raised

against an individual, and this was all that was decided in *United States v. Bostwick* (94 U. S., 53). So, contracts made by the Government are interpreted by the same rules that apply to the construction of contracts between individuals. But to say, as is said in the opinion of the court below, that "when the Government enters into a contract it lays down its constitutional authority, and has only the same rights and is subject to the same obligations as an individual," is to announce a proposition which is certainly not of universal application. Certainly there is no reported case the facts of which called for the enunciation of so broad and sweeping a doctrine.

The only case cited in the opinion of the court below in this connection is *Southern Pacific Co. v. United States*. (28 C. Cls. R., 77.) That case was simply this: The claimant, the lessee of a number of railroads over which it carried the mail, sued the Government in the Court of Claims to recover a balance due it for such service. The defense was that the leases were *ultra vires* and void, because they effected a combination of railroads against public policy. It was held that the defense could not be maintained; that while in an action on a lease to recover some consideration thereunder the defendant may attack it on the ground of *ultra vires*, this can not be done where the action is by the lessee against a third party for services rendered; that the authority of the lease in the latter case can not be called in question.

As to the case of *Van Hoffman v. Quincy* (4 Wall., 535), that was a *mandamus* proceeding in which no contract with the Government was involved and in which the United States had no interest, and the same remark applies to *Walker v. Whitehead* (16 Wall., 314), which cases are cited for the proposition that the laws which subsist at the time and place of making a contract, and where it is to be performed, enter into it and form a part of it.

This is no doubt true as a general proposition, but it does not universally apply, so far as contracts with the United States are concerned. Thus, to mention a few instances, contracts with the United States are not subject to state statutes of limitations (*United States v. Thompson*, 96 U. S., 486); or to state registry statutes; or to the bankrupt law (*United States v. Herron*, 20 Wall., 251); or to state homestead laws—at least it was decided in *Commonwealth v. Ford*, 29 Gratt. (Va.), 683, that contracts made with the Commonwealth of Virginia are not subject to the homestead law of the State, and the same principle, we take it, is, in the absence of legislation by Congress on the subject, not less applicable to the transactions of the United States. In that case the court declare that a contrary “construction would divest important public rights and interests,” and would, moreover, be in conflict with the ancient rule, founded in the highest public policy, that general statutes do not bind the sovereign unless the intent be manifested by express words or by necessary implication.

In *United States v. Thompson*, *supra*, Mr. Justice Swayne, in delivering the opinion of the court, said:

The United States not being named in the statute [of limitations] of Minnesota, are not within its provisions. It does not and can not apply to them. If it did, it would be beyond the power of the State to pass it, a gross usurpation and void. It is not to be presumed that such was the intention of the state legislature in passing the act.

III.

AS TO THE "GALVESTON."

Much that has been said in regard to the *Mohawk* equally applies to the *Galveston* contract. In the latter, as in the former, a *lien* was reserved upon the vessel, and the materials on hand for use in her construction, for advances, the lien to commence with the first payment. The contract is dated December 14, 1899, and at the time the receiver was appointed she was 70 per cent complete. There had then been paid by the Government on account of the work the sum of \$698,514.45, all of which was paid before the filing of the supply liens, as shown by "Report No. 1" of the commissioner, to which report reference has already several times been made.

The construction of the cruiser was authorized by the act of Congress of March 3, 1899 (30 Stats., 1044), but the act did not expressly direct or authorize the Secretary of the Navy to reserve a lien in the contract, and upon that ground the validity of the lien was

denied by the supply creditors. The court below did not sustain the point, saying: "We have been unable to find any authority of Congress for the payment of the installments on the *Galveston*, or for the taking of a lien therefor, but we do not deem this of any importance," and the case was dealt with as though the lien was admittedly valid.

It has long been the practice to reserve such a lien in contracts of this sort, and that the Secretary of the Navy had the implied power to do so in the present instance would seem to be indisputable from the decisions of this court.

In *United States v. Macdaniel* (7 Pet., 1) it was decided that the courts may allow a clerk in a department, by way of offset, a claim for services rendered to the Government under the orders of the head of the department, though there be no act of Congress providing for the case. Mr. Justice McLean, speaking for the court, said:

A practical knowledge of the action of any one of the great departments of the Government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law; but it does not follow that he must show a statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government

would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out and limitations imposed on the exercise of its powers, there are numberless things which must be done that can neither be anticipated nor defined and which are essential to the proper action of the Government. Hence, of necessity, usages have been established in every department of the Government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits. And no change of such usages can have a retrospective effect, but must be limited to the future.

In *United States v. Corliss Steam-Engine Co.* (91 U. S., 321) it was held that where the Secretary of the Navy possesses the power under the legislation of Congress and the orders of the President to enter into contracts for work connected with the construction, armament, or equipment of vessels of war, he can suspend the work contracted for, when from any cause the public interests may so require, and that where such suspension is ordered he is authorized to settle with the contractor upon the compensation to be paid for the partial performance of the contracts.

The rule established by these cases was strikingly exemplified by the *habeas corpus* case of *Benson v. Henkel* (198 U. S., 1). There Benson had been indicted under section 5451 of the Revised Statutes for bribing an officer of the Government to do an

act in violation of his official duty. The duty in question had not been prescribed by statute, but by the head of the department in which the officer was employed, and accordingly the question arose whether the indictment charged an offense within the statute. It was held that it did. Mr. Justice Brown, in delivering the opinion of the court, said:

But it is clearly for the court to say whether every duty to be performed by an official must be designated by statute, or whether it may not be within the power of a head of a department to prescribe regulations for the conduct of the business of his office and the custody of its papers, a breach of which may be treated as an act in violation of the lawful duty of an official or clerk. (Citing *United States v. Macdaniel*, *supra*.)

To the same effect is the very recent case of *Haas v. Henkel*, 216 U. S., 462, wherein it appeared that Haas had been indicted for a conspiracy to commit an offense against the United States, namely, the offense of bribing one Holmes to violate his duty as a public official by giving out advance information about the monthly cotton reports, there being no statute which prohibited the giving out of such official secrets in advance of their lawful promulgation. The court, however, speaking by Mr. Justice Lurton, held that the indictment charged an offense, basing the decision upon this point upon the *Macdaniel* and *Benson* cases, *supra*.

In *Van Brocklin v. State of Tennessee*, 117 U. S., 151, 154, Mr. Justice Gray, speaking for the court, said:

The United States, for instance, as incident to the general right of sovereignty, have the capacity, within the sphere of their constitutional powers and through the instrumentality of the proper department, to enter into contracts and take bonds, not prohibited by law and appropriate to the just exercise of those powers, although not expressly directed or authorized to do so by any legislative act; and likewise to take mortgages of real estate to secure the payment of debts due to them, notwithstanding Congress has enacted that "no land shall be purchased on account of the United States, except under a law authorizing such purchase."

Very important features of the contract for the cruiser are contained in the twelfth and thirteenth clauses.

By the twelfth clause it was provided that in the event of the failure of the contractor, from any cause or causes other than those specified in the eighth clause, to go forward with the work and make satisfactory progress toward its completion within the prescribed period, the Secretary of the Navy should have the option to declare the contract forfeited; that upon the exercise of this option, the contractor, upon written notice, should become indebted to the United States, as and for liquidated damages, in a sum equal to the aggregate amount of the payments theretofore

made on account of the work, and would refund the same on demand within sixty days thereafter, the United States to have the right, also, to hold as collateral security for such refund the vessel, or so much thereof as might be constructed, and the materials on hand applicable thereto.

Now, if the contract had stopped there, then there would be ground for the conclusion that the only right that the Government had, after the declaration of forfeiture, was that of a collateral security for a debt. But the contract did not stop there; it went further, and provides that, after the declaration of forfeiture, the Secretary of the Navy shall cause a complete statement and inventory to be taken of all work done upon the vessel, and of all materials on hand applicable to her construction, and shall cause the same to be duly valued by a board of competent persons to be appointed by him, which board shall promptly proceed to examine such work and materials, and ascertain and declare the fair market value thereof, at the time the forfeiture was declared.

And then follows the thirteenth clause, which provides that, upon the receipt of the report and finding of the said board, and upon his approval thereof, the Secretary of the Navy may, in his discretion, proceed to complete the vessel in accordance with the contract, using for that purpose all suitable materials on hand and included in the said inventory, and that "the title to said vessel, or so much thereof as shall have been completed, and to all such materials, shall

forthwith vest in the party of the second part," i. e., the United States. (Record, 237, 238.)

It will thus be seen that the materials and the unfinished vessel were, after the declaration of forfeiture, to be held "as collateral security for such refund" of the money that had been paid, but it was only to be held as such collateral security until the steps prescribed in the contract could be taken to vest title in the United States in the event (which in the nature of things was practically certain to happen) the Secretary of the Navy should determine to complete the vessel.

We respectfully submit that the learned court ignored or rather misinterpreted this feature of the contract. Upon this point it said: "The provisions of the contract plainly indicate that after the declaration of forfeiture the only lien on the cruiser which the Government could assert was that of a collateral security for a debt; and the fact that the thirteenth clause of the contract provided that in a future and uncertain event title to the cruiser might vest in the United States as 'collateral security,' in no wise qualified the right of property of the Trigg Company therein." (Record, 399.)

In pursuance of authority conferred by the contract the Secretary of the Navy, on the 14th of May, 1903 (after the institution of the present suit and before the filing of the stipulation by the district attorney), declared the contract forfeited in a letter addressed to the president of the Trigg Company,

and also to the receiver and to the surety of the company, the Virginia Trust Company (Record, 371-2); and immediately thereafter he appointed a board of appraisal to inventory and appraise the vessel and materials, which board, without unnecessary delay, acted in the matter, and duly made its report to the Secretary of the Navy, which was by him approved. (Record, 240 *et seq.*)

The effect of this was that, as stipulated in the contract, the title to the vessel and the materials in question forthwith vested in the United States.

As already said, the supply lien statute of Virginia does not contemplate that a lien shall attach to any other property than that belonging to the debtor corporation, and therefore although title to the vessel and the materials had not vested in the United States at the time the supply liens attached, yet the Trigg Company at that time had not the absolute property therein, but only a qualified interest; that is, a title which was liable under a precedent contract to be divested, and to pass to the United States, upon the happening of the event that has happened; and the supply creditors can subject to their claims no more than the interest of the Trigg Company in the property, which is nothing. (*Hauselt v. Harrison*, 105 U. S., 401.)

If the attaching of the supply liens before the United States acquired the title affects the case, the prior lien reserved in the contract will be held not to have merged by the acquisition of the title. "It is a rule of equity that an encumbrance shall be kept

alive or be considered extinguished as shall most advance the justice of the case." (*Burnheisel v. Firman*, 22 Wall., 170, 179; *Rorer v. Fergusson*, 96 Va., 411.)

It is submitted that the Secretary of the Navy had authority to contract for the lien, and that the lien is superior to the supply liens in question, not because, as was said in connection with the *Mohawk*, of any prerogative right on the part of the United States, but because it is prior in time to those liens. The authorities cited by the court below in its opinion (Record, 400), on the subject of the Government's general right to priority, are not controverted, but, as we conceive, they have no bearing on the case at bar.

As to the position taken in the opinion of the court below, founded upon the provision in the eighteenth clause of the contract, empowering the Secretary of the Navy to require the Trigg Company, as a condition precedent to making any payment on account of the vessel, to furnish evidence satisfactory to him that no liens or rights *in rem* of any kind had attached, etc., which provision is construed as showing that the contract was made with reference to the state supply lien law, we make the same answer that has been made to a similar suggestion in connection with the *Mohawk*. Moreover, as the court said in *Bank of the United States v. Halstead* (10 Wheat., 51, 63):

An officer of the United States can not, in the discharge of his duty, be governed and controlled by state laws, any further than such

laws have been adopted and sanctioned by the legislative authority of the United States. And he does not, in such case, act under the authority of the state law, but under that of the United States, which adopts such law.

Finally, it is respectfully submitted that the decree of the Supreme Court of Appeals of Virginia reversing the decree of the Chancery Court of the city of Richmond is erroneous and should be reversed.

WILLIAM R. HARR,

Assistant Attorney-General.

LUNSFORD L. LEWIS,

United States Attorney,

Eastern District of Virginia.

O



In the Supreme Court of the United States.

OCTOBER TERM, 1910.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 458.
v.	
ANSONIA BRASS AND COPPER COMPANY, American Steel Casting Company, et al.	

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE
STATE OF VIRGINIA.

REPLY BRIEF FOR THE UNITED STATES.

1. The brief for the Government was filed more than six days before the case was called for argument, and therefore within the time prescribed by the 21st rule of this court.

2. As to the jurisdiction of this court, the assignments of error, which substantially embody the exceptions that were filed by the brief for the Government to the commissioner's report in the Chancery Court, allege a case clearly within the statute, section 709, Revised Statutes. The counsel in denying the jurisdiction of this court seemed to have been misled by a remark of Chief Justice Waite, in delivering the opinion in *United States v. Thompson* (93 U. S., 586),

which was corrected by the court in the opinion delivered by Mr. Justice Gray in *Stanley v. Schwalby* (162 U. S., 255, 278).

3. As to the point that the Government "submitted to the jurisdiction of the State," the contention is based upon the fact that a stipulation in respect to each of the vessels in question was filed by the district attorney under the provisions of the act of June 11, 1864 (secs. 3753 and 3754, R. S.).

It is clear that upon a correct interpretation of the statute, the Government did not, by filing the stipulations, submit to the jurisdiction of the state court in the sense of waiving any of its rights, privileges, or immunities as a sovereign. The statute evidently does not contemplate that the filing of a stipulation makes the Government a formal party to the suit. Nor was it necessary that a stipulation should have been filed in this case in order that the rights of the Government might be brought to the attention of the court. That could have been done by a suggestion filed by the proper officer or officers of the Government, namely, the Attorney-General (as in *United States v. Lee*, 106 U. S., 196) or the proper district attorney (as in *Stanley v. Schwalby*, 147 U. S., 508; *S. C.*, 162 U. S., 255). See also *The Exchange*, 7 Cranch., 116, 147.

The statute is express that the filing of a stipulation shall not be considered "as waiving any objection to any proceeding instituted to enforce any such claim," i. e., "any claim against any property of the United States, or against any property held,

owned, or employed by the United States," etc. (Sec. 3753.) Nor does the statute contemplate that by filing a stipulation any party to the suit, or the United States, shall acquire any rights that he or they did not have before, or lose any that he or they already had, the idea being that the parties shall have such rights—no more and no less—than they would have had "in case possession of such property had not been changed." (Sec. 3754.)

The statute has not been construed by this court, but the contention of the Government in respect to the effect of the filing of a stipulation under it is fully supported by the case of *Briggs v. A Light Boat*, 11 Allen (Mass.), 157, 177, 178, 186.

The case, therefore, so far as the Government is concerned, stands, for the purposes of this writ of error, upon the same footing as if no stipulations had been filed in the cause and the rights of the Government had been brought to the attention of the state court by a suggestion filed by the proper officer of the United States. No suggestion, *eo nomine*, was filed in the cause, as the rights of the Government fully appear in and by the stipulations, respectively, the stipulations thus subserving a double purpose.

For stipulation in regard to the dredge see R., 410 et seq.; Mohawk stipulation, R., 275 et seq.; Galveston stipulation, R., 225 et seq.

The case is entirely different from *The Siren*, 7 Wall., 152, and *The Davis*, 10 Wall., 15. See remarks upon those cases in the opinion of the court,

delivered by Mr. Justice Bradley, in *Carr v. United States* (98 U. S., 433, 438-439).

If the Government had fully "submitted to the jurisdiction," as fully as if it had been a private individual, why was a judgment for costs not rendered against it?

4. As to the effect of the joint resolution of Congress, and the nature and effect of the lien reserved in the Mohawk contract under the joint resolution, we refer to what is said on that subject in the brief for the Government, pages 55 to 60, inclusive.

5. As to these government contracts being subject to the state recordation statutes, that question is not now an open one on this writ of error. Both the commissioner (R., 173) and the Chancery Court (R., 53-55) held that the contracts were not subject to that statute, and while the Supreme Court of Appeals did not in terms mention the point in its opinion, the inference is irresistible that upon that point it did not differ from the commissioner and the Chancery Court.

6. As to the point that when the Government enters into a contract with an individual it lays aside its sovereignty and descends in all respects to the plane of a private party, the authorities cited in this connection do not sustain the proposition. The cases mostly relied upon are cases which arose in the Court of Claims, among them being *Smoot's Case* (15 Wall., 36).

In that case the claimant had no just foundation for the claim asserted, and this court, in the course of

its opinion, observed that appeals to the magnanimity and generosity of the Government in such cases are out of place when addressed to the courts; that Congress in creating the Court of Claims limited its jurisdiction to cases arising out of contracts, express or implied, and to contracts to which the ordinary principles of contracts must and should apply. That was certainly very far from asserting that in all cases the Government when entering into a contract lays aside its sovereignty and acquires no rights, privileges, or immunities that would not accrue to a private party under similar circumstances. This point is discussed in the brief for the Government, and we will only add to what is there said a reference to the case of *Trigg v. Bucyrus* (104 Va., 79), as an authority against the position of the defendants in error here.

7. As to the power of the Trigg Company, a Virginia corporation, to contract for a lien (as in the Mohawk and Galveston contracts) to be superior to any liens that might subsequently accrue under the State labor and supply lien statute, the company undoubtedly had the power to contract for a lien, and the case stands on the same footing as if the contracts had been contracts between the Government and an individual ship builder; and we reiterate what is said in the brief for the Government that it is not competent for a State to prohibit, expressly or impliedly, one of its own citizens from contracting with the United States for the construction of a ship or

other chattel for a public, national purpose, except in subordination to a state statute.

It is conceded in the opinion of the Supreme Court of Appeals that a contract between the United States and a corporation, like the contracts involved in the present case, differs in no essential particular from a contract between the Government and an individual (R., 391-2). The power of the Government to contract is not less an attribute of sovereignty than is the power of taxation, and the principle recognized in the *Snyder* case (149 U. S., 210, 214) applies, namely, that in such cases the operations of the Government can not be hindered, retarded, or interfered with by state laws.

The case of *Ryan v. United States* (136 U. S., 18) has, as we conceive, no application to the case at bar. It may well be that when the United States undertakes by act *in pais* to acquire title to real estate situate in a State, the transaction is subject to the statute of frauds of such State; but that is a very different thing from saying that when the Government contracts for the construction of a battle ship or other vessel to be used in the public service a lien reserved in the contract, for advances made during the progress of the work, is subject to be divested or postponed in favor of a lien subsequently accruing under the provisions of a state statute.

8. As to the provisions in the contracts in question relative to the payment of labor and supply claims, as showing that the contracts were made with reference to the state labor and supply lien statute, it

is needless to repeat what is said on that subject in the brief for the Government (pp. 61, 75-76).

9. As to the denial that the rights and liens of the Government were prior *in point of time* to the supply liens in question, the record supports the contention of the Government. This is shown by "Report No. 1" of the commissioner, which does not appear in the transcript of the record before this court, for the reason stated in the brief for the Government (pp. 24, 25), but which is being printed and will be laid before the court.

The court below considered that the question to be determined in this connection was whether the supply liens were *filed* before the rights of the Government attached (R., 387), and every dollar that was paid by the Government on account of the contracts, aggregating nearly \$1,000,000, was paid before any one of those liens was filed.

10. As to whether title to the dredge (*Benyuard*) vested in the United States as the "parts" were paid for, we refer to what is said on that subject in the brief for the Government, pages 17 to 53, inclusive.

11. The sixth assignment of error (R., 421) is not insisted upon.

Respectively submitted.

WILLIAM R. HARR,
Assistant Attorney-General.

LUNSFORD L. LEWIS,
*United States Attorney,
Eastern District of Virginia.*

OCTOBER, 1910.



Office Supreme Court, U. S.
FILED.

OCT 15 1910

JAMES H. MCKENNEY,

CL. EMPK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 458.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

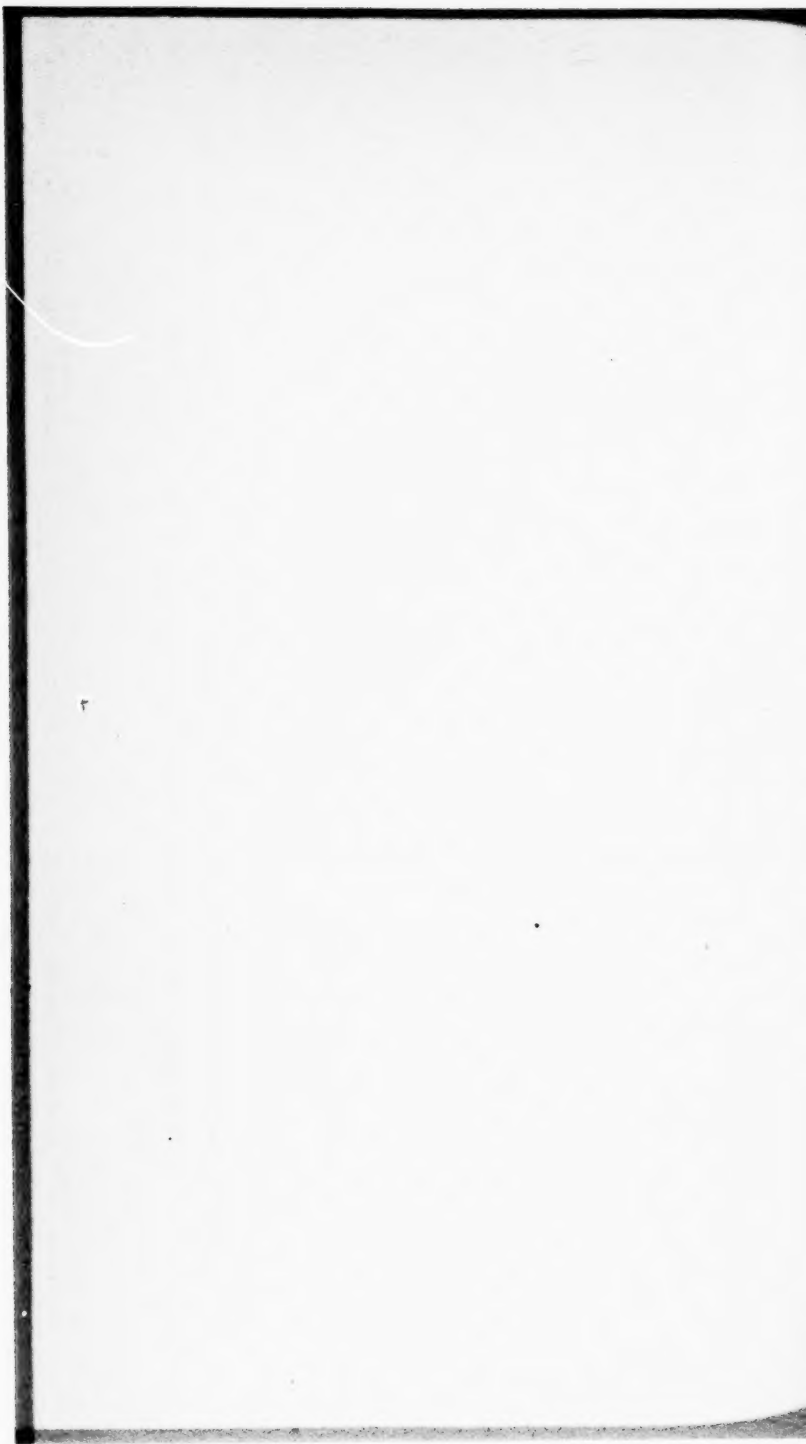
ANSONIA BRASS AND COPPER COMPANY ET AL.

**BRIEF FOR CERTAIN OF THE DEFENDANTS IN
ERROR.**

R. G. BICKFORD,

*Counsel for Ansonia Brass and Copper Company
et al., Certain of the Defendants in Error.*

(22,046.)



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 458.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ANSONIA BRASS AND COPPER COMPANY, AMERI-
CAN STEEL CASTING COMPANY AND OTHERS,
DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE
STATE OF VIRGINIA.

**BRIEF FOR CERTAIN OF THE DEFENDANTS IN
ERROR.**

This is a writ of error to the Supreme Court of Appeals
of the State of Virginia.

(At the date of reading the proofs in this brief, no brief
has been filed for the Government. Counsel for appellees
is afraid to further delay the filing of this paper.)

Has the Government the Right of Appeal.

This question has been presented by a brief filed in this cause by the Honorable Eppa Hunton, Jr., to which reference is made.

The Question in the Case.

Does the Supply Lien Law of the State of Virginia bind incomplete vessels at the yard of a private contractor in the course of construction for the United States Government?

Do contractual liens and rights contained in the Government contract take priority over supply liens which a State statute declares to be prior to all other liens? Are the terms of the Government contract intended to override the State statute? If so, will the intent be effectual? Is not the right of the United States limited by the right of its grantor? No question of lien under a Federal statute is involved.

Statement of Facts.

The three vessels were, respectively, the *Beneguard*, a sea-going suction dredge under construction for the War Department; the *Mohawk*, a steel propeller, intended for the Revenue Cutter Service, under construction for the Treasury Department, and the *Galveston*, a protected cruiser under construction for the Navy Department.

Upon all these vessels the Government had made installment payments, but none had been completed or delivered at the time of the filing of the supply liens, nor thereafter, until the Government entered into stipulation for their delivery under sections 3753-3754 of the United States Revised Statutes.

The Government concedes that The William R. Trigg Company was a manufacturing company under the laws of the State of Virginia.

The supply-lien statute of the State of Virginia, which was in force for many years before the date of the contracts for these vessels, provides that persons furnishing supplies to such a corporation are entitled to a prior lien on all its property. The courts have construed this to mean a first lien superior to other liens, though the latter first accrued.

The Government having thus voluntarily submitted to the jurisdiction of the State and invited the decision of its courts, the cause proceeded. It was finally held by the Supreme Court of the State of Virginia that the said vessels so taken possession of by the Government were, and for long prior thereto had been, subject to the supply liens of appellees. The Government assigns error.

Index Statement of Several Errors Assigned and Appellees' Replies.

To serve as an index to this brief and to convenience the court, counsel here presents in parallel columns a brief statement of the errors alleged by the Government (as he understands them) and appellees' reply thereto.

These assignments of error are discussed in the following order: Sixth, fourth, fifth, third, second, and first assignments of error.

The Government claims that—

Sixth Assignment of Error.

The Virginia Supply Lien Statute is unconstitutional because in violation of the 14th Amendment to the Constitution of the United States. (See Government's Sixth Assignment of Error, transcript of record, page 421).

Appellees reply—

This question was not raised in the Supreme Court of the State. It was finally disposed of by the trial court from whose decision no appeal has been taken by the Government.

The assignment is unintelligible, except so far as it is inconsistent with the remaining assignments of error.

Appellees refer further to this point in another brief filed in this cause.

The Government claims that—

Appellees reply—

Fourth Assignment of Error.

That so far as it pretends to grant lien rights against the said several vessels under construction, which are superior to the rights in said vessels gained by the United States by virtue of its contract, the Virginia Supply Lien Statute is void, as infringing an immunity claimed by the United States, which, as sovereign, is not liable to the State laws. (See transcript of record, p. 420.)

A Government contract (*not statute*) cannot extend the powers of a corporation beyond the limits of its charter. Government's contract rights same as those of an individual contractor. Government as sovereign has right to contract, but it contracts in its corporate, not sovereign capacity. Government may sue or become claimant in a suit. It filed its stipulation and craved of State court an adjudication of its right. It thus became liable as an individual and was bound by the laws of the forum. A citizen of a State cannot charge or alien property within the State except in accordance with its laws, which operate on the *res* before it is divested from the grantor, therefore before it vests in the Government, which takes *cum onere*.

The Trigg Company was bound by the supply lien law. The Government could only take what the company could give. The law presumes that the Government intended to take subject to the supply liens.

Virginia laws were incorporated into every contract of Virginia corporation as if therein set forth, and this the parties intended. This was not only implied, but express intent.

The Government claims that—

Appellees reply—

Fifth Assignment of Error.

That the contracts for the said several vessels were not made by the Government with reference to the State statute, nor did that statute limit the power of the Trigg Company to contract with the United States. (See 5th assignment of error, transcript of record, page 420.)

In the 5th assignment of error, in addition to what is above set forth, but seemingly by way of argument, upholding the main error above stated, counsel for the Government uses language which may be intended as a distinct error, that is to say—

That the interest claimed by the Government in and to said vessels was acquired before the claims of the supply lien creditors accrued.

Repetition of fourth assignment. Priority of Government in time denied, but immaterial if true.

The foregoing assignments of error involve grounds which, if they apply at all, apply to all of the ships. Those now stated are particular assignments, based upon the provisions of the several contracts.

THE GALVESTON.

The Government contends: Counsel for appellees replies:

Third Assignment of Error.

(a) That the lien reserved in the contract for this vessel, being in favor of the United States, is for that reason a paramount lien.

(b) That by virtue of a provision in the *Galveston* contract, and by virtue of certain proceedings thereon in the Chancery Court, after the institution of suit therein, title vested in the United States.

Request that argument under Fourth and Fifth Assignments be considered here.

(a) In addition thereto, property and possession of *Galveston* was in Trigg Company when liens were filed. In this status, Secretary declared contract forfeited, demanded return of installments, and claimed vessel as collateral. The provision of contract authorizing this is in the nature of an hypothecation, equitable mortgage, or lien. Such a lien does not pass any property in the thing. If the property remained in Trigg Company, the supply lien operates and has priority. Supply lien also entitled to priority on equitable grounds.

The Government is entitled to priority only when a statute expressly provides therefor.

(b) Assignment not clear, therefore excepted to.

So far as understood, depends on same grounds as previous errors, therefore, previous authorities referred to.

THE MOHAWK.

The Government contends: Counsel for appellees replies:

Second Assignment of Error.

Mohawk contract governed by same rule as *Galveston*.

The joint resolution relates to the form of the contract. It does not pretend to give a statutory lien.

That the lien reserved in the *Mohawk* contract for moneys advanced by the United States on account thereof, having been reserved in pursuance of a joint resolution of Congress, is, for that reason, a lien paramount to the liens under the Supply Lien Statute.

THE BENYUARD.

First Assignment of Error.

Provision of specifications, that "parts paid for" shall become property of Government, does not pass title to vessel.

That by the provision of the *Benyuard* contract, the title to the *Benyuard* had vested in the United States at the time of the institution of the suit in the Chancery Court of the city of Richmond.

The general rule, that no property passes, applies notwithstanding.

The Government Takes Subject to the Virginia Recordation Laws.

This point was urged but not passed upon by the Supreme Court of Virginia. Appellees insist on same in this court.

The recordation statutes bind the Government because it binds the grantor, and binds the *res*.

BRIEF OF COUNSEL FOR APPELLEES.

As will appear from the foregoing arrangement, counsel for the appellees has found it necessary, in order to avoid repetition, to depart from the order in which errors were assigned.

The Supply Lien Statute.

A factor common to all the assigned errors is the supply-lien statute of Virginia. On this statute all the rights of these appellees are based. For convenience a copy of the statute is here presented.

"SEC. 2485. Lien of employees, and so forth, on transportation companies, and so forth, on franchises and property of company.—All conductors, brakemen, engine-drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, store-keepers, mechanics, or laborers, and all persons furnishing railroad iron, engines, cars, fuel, and all other supplies necessary to the operation of any railway, canal, or other transportation company, and all clerks, mechanics, and laborers who furnish their services or labor to any mining or manufacturing company, whether such railway, canal, or other transportation, or mining or manufacturing company be chartered under or by the laws of this state or be chartered elsewhere and be doing business within the limits of this state, shall have a prior lien on the franchises, gross earnings, and on all the real and personal property of said company, which is used in operating the same, to the extent of the moneys due them by said company, for such wages or supplies; and no mortgage, deed of trust, sale, hypothecation, or conveyance, executed since the twenty-first day of March, eighteen hundred and seventy-seven, shall defeat or take precedence over said lien; and all persons furnishing supplies to a mining or manufacturing company, necessary to the operation of the same, shall have a prior lien upon *the personal property of such company other than that forming part of its plant* to the extent of the money due them for such supplies, and also a lien upon *all* the estate, real and personal, of such company, which said last lien, however, upon *all* such real and personal estate, shall be subject and inferior to any lien by deed of trust, mortgage, hypothecation, sale, or convey-

(*Brief of Counsel for Appellees—Sixth Assignment of Error.*)

ance, made or executed and duly admitted to record, prior to the date at which said supplies are furnished: provided, however, that the lien secured by this provision to parties furnishing supplies, shall be subsequent to that due to clerks, mechanics and laborers for services furnished as aforesaid: and provided, that if any person entitled to a lien as well under section twenty-four hundred and seventy-five as under this section, shall perfect his lien given by either section, he shall not be entitled to the benefit of the other: and provided, also, that no right to or remedy upon a lien which has already accrued to any person shall be extended, abridged, or otherwise affected hereby."

Virginia Acts, 1891-2, p. 362.

Sixth Assignment of Error.

The question presented in this assignment of error was not raised, argued, or referred to by Counsel in the Supreme Court of Appeals of Virginia, nor, indeed, could it have been under the rules of practice which obtain in Virginia. The history of the contention upon this point is as follows:

When this cause was pending in the Chancery Court of the City of Richmond, it was on the 30th day of January, 1905, referred to a Commissioner, who, in pursuance of the instructions therein contained, took an account, wherein he reported that the supply liens, here the subject in controversy, were valid and were prior liens upon all the personal property of the William R. Trigg Company, and also reported the real and personal property forming *a part of the plant* of the William R. Trigg Company, reserving for another report the ascertainment of the real and personal property *not a part of the plant*.

On the 23rd day of May, 1905, The Savings Bank of Richmond excepted to the report of Commissioner Massie on the ground, among others, that the labor and supply lien law of Virginia was in conflict with the 14th Amendment to the Constitution of the United States, forbidding class legislation by any State. In this exception the Honorable L. L. Lewis

(*Brief of Counsel for Appellees—Sixth Assignment
of Error.*)

united on the part of the Government. On the 23rd day of May, 1905, these exceptions were overruled by the trial court, whereupon the First National Bank of Richmond, which had also united in the same exceptions, appealed to the Supreme Court of the State, which, by an opinion rendered January 17, 1907, sustained the Court below, and held that the statute was constitutional. Thereupon the question became *res adjudicata* in the cause. When the Government united in the exceptions of the Savings Bank of Richmond, upon which exceptions the decision of the trial Court and of the Supreme Court was thus made, it of necessity became bound by these decisions.

Pending the above appeal, on the 31st day of October, 1906, Commissioner Massie filed another report ascertaining the property of the William R. Trigg Company which was *not a part of its plant*. In this report, Commissioner Massie sustained the claims of the supply lienors, that all ships under construction at the Trigg Yard, including those intended for the United States, were the property of the William R. Trigg Company. On the same day the Virginia Trust Company, who were interested in the question as bondsmen to the United States Government for the performance of the contracts, excepted to the report on the same ground of constitutionality that The Savings Bank of Richmond had previously excepted to it. In this exception the Honorable L. L. Lewis for the Government also united.

The cause then proceeded until February 4, 1908, on which date the Chancery Court of the city of Richmond, while it overruled Report No. 4 of Commissioner Massie in part, expressly held that the Virginia labor and supply lien statute was not void as being contrary to the Constitution of the State of Virginia or of the United States, that question being *res adjudicata* in the cause. (See Transcript of Record, pp. 51-52).

The Chancery Court in the decree referred to, however, having decided in favor of the lien priority of the United

*(Brief of Counsel for Appellees—Sixth Assignment
of Error.)*

States, the supply lienors filed in the Supreme Court the petition for a writ of error and supersedeas, which appears in the Transcript of Record, pages 1 to 51, inclusive. It is manifest that this appeal raises no question of the validity of the supply liens under the 14th Amendment, and the question was not raised by the Government by cross appeal. It was not referred to in any brief of the Government, nor was it referred to in argument. It had been *res adjudicata* since the decision of the trial court, and certainly since the decision of the appeal of the First National Bank above referred to. That appeal had been taken while the Government was a party,—when the Government knew that the supply lienors were claiming that the Government ships were the property of the William R. Trigg Company, and the Government was bound by the previous decision. It was also bound by the decision of the Chancery Court of the City of Richmond of February 4, 1908.

It is true that the opinion of the Supreme Court of Appeals of Virginia, to which error is now assigned, refers to the Federal question, but it does so by way of a historical statement of the cause under review, and not in consequence of any point made by Counsel, and not as a subsequent decision reaffirming the former one.

For the above reason, Counsel for the appellees contends that the Government cannot now be heard upon the Sixth Assignment of Error.

Another ground exists, however, equally conclusive against the Government.

It is a familiar principle of practice, that no litigant will be permitted to take inconsistent positions in the course of the litigation. The first five assignments of error made by the United States to the Supreme Court of the State are on the ground that the Supreme Court erred in not accord-

*(Brief of Counsel for Appellees—Fourth Assignment
of Error.)*

ing to the United States a priority of right, or an immunity from law, which it claims on the score of being a sovereign. The sixth assignment of error is altogether inconsistent with the concept of sovereignty with which this appeal is saturated. The 14th Amendment to the Constitution is intended for the protection of a subject "citizen," or subject "person," not for the protection of a sovereign. To secure immunity from the State laws, the Government claims to be a sovereign. To secure the protection of the Federal Constitution, the Government claims to be a citizen or person. The positions are inconsistent and both cannot stand.

Should the Court be of opinion that the portions of the record in this cause which have been referred to, but which do not appear in the Transcript of Record, should be incorporated herein, a suggestion of diminution of the record is here made, and request is respectfully made for permission to print the missing portions of the record under the thirty-second section of the agreement of Counsel. (See page 50 of the Transcript of Record.)

For further argument upon the above question, Counsel refers to the brief of Honorable Eppa Hunton, Jr., filed in this cause.

Fourth Assignment of Error.

In this assignment the Government claims error because it was denied complete immunity from the indirect as well as from the direct operation of the supply-lien statute.

Counsel for the Government claims that the sovereignty of the United States is so potent that it removes from the dominion and control of the State all of its citizens who deal with the United States, and all of the property which may be the subject of such dealing.

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Counsel for the Government claims, perhaps not in so many words but in effect, that by reason of its signature to a contract with an officer of the Government, a State corporation acquires new powers in utter violation of its charter and the laws of its creator State—powers which are only limited by the terms and scope of the contract into which it enters.

In effect it is contended that such a contract will operate to release the property of a corporation from an encumbrance placed upon it by statute and, by consequence, take the benefit of this encumbrance from third persons entitled thereto. No authority has ever been cited in support of this remarkable proposition. The mere statement of the contention seems a sufficient answer to it.

No question arises here as to what the effect of a Federal statute would be if it attempted as major sovereign to increase the powers of a State-created corporation. Then, indeed, a question of sovereign power would be presented, and it would be one of the most serious and far-reaching exercises of sovereign power that Congress could essay, for it would enable the created corporation by its own voluntary act to defy its creator. I have said that here there is no question involving a Federal statute; but every argument which has heretofore been made by the Government upon the subject of this assignment has been based upon the notion that Congress, having by statute given to its officers the right to contract, a contract made by such officer is to be regarded as having the effect of a statute. That a law duly passed by Congress would override State laws and, accordingly, the terms which a contracting officer might choose to insert in a contract authorized by statute would have the like effect!

It may be that this contention will be abandoned in this

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court. At the time of the preparation of this brief, however, no brief has been filed by the Government, and counsel for the appellees has no guide as to the position of the Government upon this assignment of error except that afforded in the several arguments below.

It is submitted that the contention of counsel for the Government results from a misconception. The sovereignty of the United States Government is lawful, not lawless. Accordingly it has been held that, under a contract with an individual, the rights of the Government and the rights (*not remedies*) of the individual are precisely the same as if the contract were between individuals.

See—

U. S. *vs.* State Bank, 96 U. S., 36.

U. S. *vs.* Smith, 94 U. S., 217.

U. S. *vs.* Bostwick, 94 U. S., 66.

Mfg. Co. *vs.* U. S., 17 Wall., 595.

Smoot's Case, 15 Wall., 45.

Gleason *vs.* Gosnell, 35 Court of Claims, 90.

Southern Pac. Co. *vs.* U. S., 28 Court of Claims, 105.

Curtis' Case, 2 Court of Claims, 104.

Gilbert *vs.* U. S., 1 Court of Claims, 28.

858 Bales of Cotton, 8 Fed. Cas., 389.

29 Am. & Eng. Ency. Law, 170.

“With a few exceptions, growing out of consideration of public policy, the rules of law which apply to the Government and to individuals are the same. There is not one law for the former and another for the latter.”

McKnight *vs.* U. S., 98 U. S. Rep., 186.

“A clear understanding of the relation in which the State stands to the purchasers in these contracts

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will greatly facilitate a proper solution of the questions upon which this case depends. It is well settled that so long as the State is engaged in making or enforcing laws, or in the discharge of any other governmental function, it is to be regarded as a sovereign, and has prerogatives which do not appertain to the individual citizen; but when it becomes a suitor in its own courts, or a party to a contract with a citizen, the same law applies to it as under like conditions governs the contracts of an individual. *State vs. Kroner*, 2 Tex., 492; *State vs. Purcell*, 16 Tex., 305; *Green vs. State*, 73 Cal., 32; 11 Pac., 602, and 14 Pac., 610; *Carr vs. State*, 127 Ind., 204; 26 N. E., 778; *State vs. Snyder*, 66 Tex., 700; 18 S. W., 106; *State vs. Cardozo*, 8 S. C., 79; *Patton vs. Gilmer*, 42 Ala., 548; *Danolds vs. State*, 89 N. Y., 36; *People vs. Stephens*, 71 N. Y., 549; *People vs. Canal Com'rs*, 5 Denio, 401; *Coleman vs. State*, 134 N. Y., 564; 31 N. E., 902; *State vs. Dennis*, 39 Kan., 509; 18 Pac., 723; *Morton vs. Comptroller*, 4 S. C., 448; *Davis vs. Gray*, 16 Wall., 203; *Chicago & N. W. Ry. Co. vs. U. S.*, 104 U. S., 680. In *Carr vs. State*, 127 Ind., 204, 26 N. E., 778, the Supreme Court of that State said: 'As there is a perfect contract, the State is bound to perform it according to its legal tenor and effect, and to redeem the pledge it has declared to be irrevocable. In entering into the contract, it laid aside its attributes as a sovereign, and bound itself, substantially as one of its citizens does when he enters into a contract. Its contracts are interpreted as the contracts of individuals are, and the law which measures individuals' rights and responsibilities measures, with few exceptions, those of a State, whenever it enters into an ordinary business contract.' The court of appeals of the State of New York, in the case of *People vs. Stephens*, 71 N. Y., 549, used the following language: 'The State in all its contracts and dealings with individuals, must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting and dealing with each

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other. There is not one law for the sovereign and another for the subject; but when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, although an action may not lie against the sovereign for a breach of the contract, whenever the contract, in any form, comes before the courts, the rights and obligations of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor, and suitor.' The Supreme Court of South Carolina clearly announced the same doctrine in the case of *Morton vs. Comptroller*, in the following language: 'When a sovereign State enters into a contract or bargain with an individual, it assumes to be bound, in all particulars, as an individual under like circumstances would be bound, by what is expressed or properly implied by the terms of such contract. The measure of its obligation is that applied to individuals.' "

Fristoe vs. Blum, 45 S. W. Rep., 999, 1000.

That the rights of the parties to a Government contract are, and as of right ought to be, as thus stated, has been recognized from the earliest period of our Government. Hamilton declared that—

"When a government enters into a contract with an individual it deposes, as to the matter of the contract, its constitutional authority and exchanges the character of a legislator for that of a moral agent with the same rights and obligations as an individual."

3 Hamilton's Works, 518.

The only difference between the individual and the United States in such contracts is a difference of remedy, not of right.

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"Thus compelled to come into equity for a remedy to enforce a legal right, the United States must come as other suitors, seeking in the administration of the law of equity, relief; to give which, courts of law are wholly incompetent, on account of the legal bar interposed by the bank. This court, in the *United States vs. Mitchell*, 9 Peters, 743, have recognized the principle in the common law, that *though the law gives the king a better or more convenient remedy, he has no better right in court, than the subject through whom the property claimed comes to his hands.* (Italics mine.) 2 Co. Inst., 573; 2 Ves. Sen., 296, 297; Hard., 60, 460. This principle is also carried into all the statutes, by which the appropriate courts are authorized to decide, and under which they do decide on the rights of a subject in controversy with the king, according to equity and good conscience between subject and subject. 7 Co., 19; 6 Hard., 27, 170, 230, 502; 4 Co. Inst., 190."

Brent vs. The Bank of Washington, 10 Peters, 614.

"When the United States, by its authorized officer, become a party to negotiable paper, they have all the rights, and incur all the responsibility of individuals who are parties to such instruments. We know of no difference, except that the United States cannot be sued."

The United States vs. Bank of the Metropolis, 15 Peters, 392.

It is a sovereign in its *power* to contract; it is a corporation as to the contract actually entered into. So marked is this distinction that the courts have held that where a general law, passed after the United States had made a contract with an individual, resulted in obstructing the work, performance, nevertheless, could not be excused.

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"This position cannot be sustained. The two characters which the Government possesses as a contractor and sovereign cannot be thus fused, nor can the United States while sued in one character be made liable for damages for their acts done in the other."

* * *

"This distinction between the public acts and private contracts of the Government—not always strictly insisted on in the earlier days of this court—frequently misapprehended in public bodies, and constantly lost sight of by suitors who come before us, we now desire to make so broad and distinct that hereafter the two cannot be confounded; and we repeat, as a principle applicable to all cases, that the United States as a contractor cannot be held liable directly or indirectly for the public acts of the United States as a sovereign."

Jones vs. United States, 1 Court of Claims, 385.

It is true that the United States cannot be sued on its contracts, for the process of courts would be an invasion of its sovereignty, yet it may sue either in State or Federal courts as a corporation or body politic.

"It is true, as against the Government, and while the title remains in the Government, he may not be able to enforce his equity, because no action can be maintained against the Government except upon contract, express or implied. *United States vs. Jones*, 131 U. S., 1; 33 L. Ed., 90; 9 Sup. Ct. Rep., 639. But while he may not sue on his equity, he may protect that equity when sued by the Government."

United States vs. Detroit & L. Co., 26 Sup. Ct., 288.

"Although, as a sovereign, the United States may not be sued, yet as a corporation, or body politic, they may bring suits to enforce their contracts and protect their property in the State courts, or in their

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own tribunals administering the same laws. As an owner of property in almost every State of the Union, they have the same right to have it protected by the local laws that other persons have."

United States *vs.* Holmes, 105 Fed. Rep., 43.

The Government has always had the power to become actor or claimant in a pending suit in order to protect a lien.

See *The Davis*, 10 Wall., 22.

This mode of exercising the right of appearance and claim is now definitely fixed by the stipulation statutes, sections 3753-3754, Revised Statutes. Under these statutes the Government submitted its claims to the vessels under construction at the Trigg yard to the Virginia courts for decision. It was only after this stipulation was given and in consequence thereof that the vessels were delivered to the possession of the United States.

Long before the filing of said stipulation, the supply liens had been claimed, and the several stipulations on their face admitted this fact, and in express terms stated the desire of the United States to protect such creditors in their claims if the same were superior to the United States, and submitted the ascertainment of this priority to the courts of the State. (See Transcript of Record, pages 227-277-411.) Under these conditions, the United States voluntarily becoming a claimant, its sovereignty was laid aside, and the courts were entitled to proceed under the laws of the forum, as in the case of a controversy arising between man and man.

"In passing upon transactions between the Government and its vendees we must bear in mind the general principles of equity, and determine rights upon those principles, except as they are limited by special statutory provisions."

United States *vs.* Detroit & L. Co., 26 Sup. Ct., 289.

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"When the sovereign is without means of collecting his debt save by recourse to a general law affecting creditors in general, the bounds of the right fixed by the State statute as to general creditors will bind the United States though it be not specially named."

Fink vs. O'Neil, 106 U. S., 280.

"The cases like *The Siren* and *The Davis*, already referred to, and many others therein cited, in which the proceeds of Government property, incidentally brought into the admiralty, have been subjected to the liens of claimants against the same, stand upon the principle that when the Government itself seeks its rights at the hands of the court, equity requires that the rights of other parties interested in the subject-matter should be protected."

Carr vs. United States, 98 U. S., 438.

"The United States, without any violation of law by the marshal, was reduced to the necessity of becoming claimant and actor in the court to assert her claim to the cotton. Under these circumstances we think it was the duty of the court to enforce the lien of the libellants for the salvage before it restored the cotton to the custody of the officers of the Government."

The Davis, 10 Wall., 22.

"It is the well-established law that, when the Government comes into a court asserting a property right, it occupies the position of any and every other suitor. Its rights are precisely the same; no greater, no less. *United States vs. Clark* (C. C. A.), 138 Fed., 294; *United States vs. Detroit Timber & Lumber Co.*, 131 Fed., 668; 67 C. C. A., 1; *United States vs. Flint*, 4 Sawy., 42; Fed. Cas. No. 15121; *Foster's Federal Practice*, sec. 63; *United States vs. Barker*, 12 Wheat., 559; 6 L. Ed., 728; *Mitchel vs. United States*, 9 Pet.,

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743; 9 L. Ed., 283; *Brent vs. Bank of Washington*, 10 Pet., 615; 9 L. Ed., 547; *United States vs. Smith*, 94 U. S., 217; 24 L. Ed., 115; *Am. & Eng. Enc. of Law* (2d Ed.), vol. 4, p. 271."

Mountain Copper Co. vs. United States, 142 Fed. Rep., 629.

"The underlying principle of all the decisions is that when the sovereign comes into court to assert a pecuniary demand against the citizen the court has authority, and is under the duty, to withhold relief to the sovereign except upon terms which do justice to the citizen or subject, as determined by the jurisprudence of the forum in like subject-matter between man and man."

Walker vs. U. S., 139 Fed., 413.

"As a matter of course, when the Government comes as a suitor into a court of equity, its claims appeal to the chancellor with no greater force than do those of an individual under like circumstances."

United States vs. Clark, 138 Fed. Rep., 299.

"Finally, this is a suit in equity. The equitable claims of the United States appeal to the conscience of a chancellor with the same, but with no greater or less, force than would those of an individual in like circumstances."

United States vs. Detroit Timber & Lumber Co., 131 Fed. Rep., 677.

"It is well settled that, 'when the United States voluntarily appear in a court of justice, they, at the same time, voluntarily submit to the law, and place themselves upon an equality with other litigants.' *U. S. vs. Beebee*, 17 Fed. Rep., 40; *U. S. vs. Barker*, 12 Wheat., 559; *Mitchel vs. U. S.*, 9 Pet., 743; *Brent vs. U. S.*, 10 Pet., 615. 'The principles which govern inquiries as to the conduct of individuals in re-

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spect to their contracts are equally applicable where the United States are a party.' U. S. *vs.* Smith, 94 U. S., 217. In *Brent vs. Bank*, 10 Pet., 615, the court declares that there is no reason why the United States should be exempted from a fundamental rule of equity subject to which their courts administer their remedy. In 18 Fed. Rep., 278, in the case of U. S. *vs.* Coal, etc., Co., the court says:

"It is true, as a general proposition, that when the Government becomes a party to a suit in its own courts, it stands upon the same footing with individuals, and must submit to the law as it is administered between man and man. But this general rule has its limitations, in that neither the defense of the statute of limitations nor that of laches can be pleaded against the United States."

United States *vs.* Ingate, 48 Fed. Rep., 253.
United States *vs.* Tetlow, Federal Case No.
16,456, 28 Federal Cases, p. 45.
29 Am. & Eng. Ency. of L., 172.

The United States are a body corporate, having a capacity to contract, to take, and to hold property, and in this respect stand upon the same footing with other corporate bodies; if they will prosecute their suits in the State courts, and avail themselves of the State laws for this purpose, it is not perceived that any good reason can be given why such State process as they use for the purpose of enforcing their right, should not be subject to the State law. Hence, where a person committed to jail under a judgment at the suit of the United States is discharged under State law, such discharge operates as a bar to an action by the United States on a bond for jail liberties. *Stearns vs. U. S.*, 2 Paine (U. S.), 300.

The United States, by voluntarily appearing in a State court, as a claimant of a fund therein, subjects itself to the jurisdiction of this court, and will be

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bound by its decision. *Johnson vs. Stimmel*, 89 N. Y., 117.

27 Amer. & Eng. Ency. of Law (old ed.), p. 537.

The foregoing cases are not merely to the effect that courts of a State may acquire jurisdiction over the United States by its voluntary submission, but that incidental to such submission the United States renders itself liable to the operation of laws of the State of such tribunal. In like manner, the United States may render itself liable to the laws of the State by voluntary contract with persons, and respecting property, subject to State laws.

A statute of Michigan required a complete memorandum of the sale of real estate to be in writing. *The Supreme Court of the United States recognized the necessity of a compliance with this statute by the United States in acquiring property.*

Ryan vs. U. S., 136 U. S., 82 *et seq.*

"In this case the Supreme Court of the United States recognizes that a non-compliance with a State registry law by the United States "might not have passed the title as between the defendant and the United States."

Ryan vs. U. S., 136 U. S., 86-87.

"The transfer of personal property by assignment or sale, made according to the laws of the country of the domicile of the owner, as a matter of comity, generally will be respected by the courts of the country where the property is located, although the mode of transfer may be different from that prescribed by the local law, but must give way to a different rule prescribed by its statute. *Green vs. Van Buskirk*, 5 Wall., 307."

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"The law of the owner's domicile is to determine the validity of the transfer or alienation of personal property, unless there is some positive or customary law of the country where it is found to the contrary."

Oakey vs. Bennett, 11 How., 33.

Black vs. Zacharie, 3 How., 483.

Cited in *Perry Mfg. Co. vs. Brown*, 2 Woodb. & M., 464, Fed. Cas. No. 11,015.

United States vs. 100 Barrels of Cement, 3 Am. L. Reg. No. S. 739; Fed. Cas. No. 15,945.

"When the Government goes into the commercial market it is bound by the *lex mercatoria*. (*United States vs. Bank of Metropolis*, 15 Peters, 377.) And when it goes into the realty market to acquire property by lease, with no statutory restriction upon its agents, it is bound by the local law of landlord and tenant. (*Bostwick vs. The United States*, 94 U. S. R., 53.) When the Government seeks to acquire property by the exercise of its right of eminent domain, the law of the United States regulates the proceeding; but when it goes into State territory to acquire an estate or right in or to real property by purchase, the law of the State controls and regulates the rights and liabilities of the contracting parties, which in this case is necessarily the law of the State of New York."

Olivia M. Clifford vs. The United States, 34 Ct. Cls. Rep., 232.

"Where the United States own land, situated within the limits of particular States, and over which they have no cession of jurisdiction, for objects either special or general, little doubt exists, that the rights and remedies in relation to it are usually such as apply to other land-owners within the State. It may be considered a general axiom in the title and transfers of real estate, that the *lex rei sitæ* governs as to

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non-residents, no less than residents and citizens. *U. S. vs. Crosby*, 7 Cranch. (11 U. S.), 115; *Johnson vs. McIntosh*, 8 Wheat. (21 U. S.), 543, 572; *Kerr vs. Moon*, 9 Wheat. (22 U. S.), 565; 10 Wheat. (23 U. S.), 192. It governs also as to remedies. *Robinson vs. Campbell*, 3 Wheat. (16 U. S.), 212, 219. So the Government, as a mere proprietor, must be in most respects treated like other proprietors, as to all servitudes, easements and other charges. *Story*, *Confl. Laws*, § 447."

United States vs. Ames, No. 14441, Federal Case, C. C.; 24 Fed. Cas., 786.

U. S. vs. Crosby, 7 Cranch (U. S.), 115.

New Orleans vs. U. S., 10 Pet. (U. S.), 662.

27 Amer. & Eng. Ency. of Law, p. 531.

See *Stearns et al. vs. U. S.*, 22 Fed. Cas., 1192, cited *supra*; 27 Amer. & Eng. Ency. Law, 537 (old ed.), cited *supra*.

"The truth is, that when the Government becomes the purchaser of property it takes the title subject to the same rules as those which regulate the transfer of it to private persons. If it is subject to liens or encumbrances, it passes *cum onere*. So it is held in cases of ordinary maritime liens. If the Government becomes the owner of a vessel by purchase, forfeiture or otherwise, it takes a title subject to the same liens for salvage, wages, bottomry and other claims as would attach to it if sold to private persons. *United States vs. Wilder*, 3 Sumner, 314; *The St. Jago de Cuba*, 9 Wheat., 416; *The Copenhagen*, 1 C. Rob. Adm., 289."

Briggs and another vs. A Light Boat, 7 Allen, 297.

The reason that the United States is in such cases held to take subject to the laws of the State, with respect to property or rights acquired in that State by contract, is because, in the absence of a permissive Federal statute, the citizen of

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the State with whom it contracts and the estate with reference to which the contract is made, being within the jurisdiction of the laws of the State and bound thereby, the right or estate of the United States cannot be greater than the right of its grantor. The State statute fully operates *before the right of the United States accrues*. The Government takes *cum onere*, and that is supposed to be the intent of the parties.

"The question was whether property bequeathed to the United States could be lawfully included in a succession tax. It was decided that it could be. In the opinion delivered by Mr. Justice Brown, it was said (p. 628; L. Ed., p. 288; Sup. Ct. Rep., p. 1075):

"The tax is not upon the property in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee."

"Again (p. 629; L. Ed., p. 288; Sup. Ct. Rep., p. 1075):

"That the tax is not a tax upon the property itself, but upon its transmission by will or descent, is also held, both in New York and in several other States."

"Yet again (p. 630; L. Ed., p. 289; Sup. Ct., Rep., p. 1075):

"We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it."

Knowlton *vs.* Moore, 20 Sup. Ct. Rep., 752-753.

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"The law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and terms within which property, real and personal, within its dominion may be transferred by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. * * * If a State may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. To the same effect is *United States vs. Fox*, 94 U. S., 315."

United States vs. Perkins, 163 U. S., 629-630.

By a statute of New York, a devise of lands in that State can only be made to natural persons and to such corporations as are created under the laws of the State and are authorized to take by devise. A devise, therefore, of lands in that State to the Government of the United States is void.

The several States of the Union possess the power to regulate the tenure of real property within their respective limits, the modes of its acquisition and transfer, the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners.

United States vs. Fox, 94 U. S., 315.

"The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the Government within whose jurisdiction the property is situated. *McCormick vs. Sullivan*, 10 Wheat.,

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202. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal Government. The title and modes of disposition of real property within the State, whether *inter vivos* or testamentary, are not matters placed under the control of Federal authority. Such control would be foreign to the purposes for which the Federal Government was created, and would seriously embarrass the landed interests of the State."

United States *vs.* Fox, 94 U. S., 320.

(This was a case of bequest of personalty.)

"It can require no argument to show, that the transfer of any claim to the United States cannot give to it any greater validity than it possessed in the hands of the assignor."

U. S. *vs.* Buford, 3 Peters, 29.

"The court entertain no doubt on the subject; and are clearly of the opinion that the title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situate. The judgment of the Circuit Court must, therefore, be affirmed."

U. S. *vs.* J. Crosby, 7 Cranch's Reports, p. 116.

See Mountain Copper Co. *vs.* U. S., 142 Fed., 629.

"All contracts are made with reference to the law of the State in which the subject-matter of the contract is, and in which the contract is made. This certainly is true with regard to mortgages by a railroad corporation. The law enters into and becomes a part of the contract, as if it were there in express terms. Brine *vs.* Insurance Co., 96 U. S., at page 634; Insurance Co. *vs.* Cushman, 108 U. S., 52; 2 Sup. Ct.,

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236. It is recognized in *Provident Sav. Inst. vs. Jersey City*, 113 U. S., 506; 5 Sup. Ct., 612, and in *Railroad Co. vs. Hamilton*, 134 U. S., at page 301; 10 Sup. Ct., 546. In this particular case the section which is under consideration is a part of the general law regulating railroad corporations. The provisions of the chapter are declared to be amendments of the charters of all railroad corporations theretofore created in this State: Gen. St., sec. 1416. *This section restricts the power of railroad corporations to execute mortgages of the franchises and property to the extent that they cannot create a lien superior to that of judgments obtained against them for personal injuries incurred in the exercise of their franchises. See Mor. Priv. Corp., sec. 1120. (Italics, R. G. B.)* When, therefore, the Charlotte, Columbia & Augusta Railroad Company, in 1883, entered into this first mortgage contract, and thereby covenanted with the trustee to give the bondholders, secured by the mortgage, a first lien on all its property and franchises in South Carolina, this must mean subject to the law now of force in this State. And as the law of 1882, then in force, provided that certain judgments obtained whenever a cause of action shall arise against any railroad corporation shall have a lien which shall take precedence of any mortgage, this provision entered into the mortgage contract. The lien of the mortgage is declared subordinate to such judgment liens; and, in accepting the mortgage under these circumstances, the mortgagee gave his assent to this. *The lien of the mortgage is not displaced. It is defined and restricted with full notice to the mortgage creditor.*" (Italics, R. G. B.)

Central Trust Co. vs. Charlotte, C. & A. R. Co.,
65 Fed. Rep., 259.

"The United States being capable of taking this legacy, it remains to consider whether there is any reason why this tax should not be collected. This court has recently decided that this tax is not imposed

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on property, but on the right of succession under a will, or devolution in case of intestacy. *In re Swift*, 137 N. Y., 77; 32 N. E., 1096. This tax, in effect, limits the power of testamentary disposition, and legatees and devisees take their bequests and devises subject to this tax imposed upon the succession of property. This view eliminates from the case the point urged by the appellant, that to collect this tax would be in violation of the well-established rule that the State cannot tax the property of the United States. Assuming this legacy vested in the United States at the moment of testator's death, yet, in contemplation of law, the tax was fixed on the succession at the same instant of time. This is not a tax imposed by the State on the property of the United States. The property that vests in the United States under this will is the net amount of its legacy after the succession tax is paid. The appellant urges that the United States, if regarded as a corporation, is, under the act in relation to the taxable transfers of property, a corporation exempt from taxation. This court has held that the provisions exempting the religious, charitable, and other corporations named in the inheritance tax acts apply only to domestic corporations. *In re Prime*, 136 N. Y., 347; 32 N. E., 1091. It is suggested that the United States is to be regarded as a domestic corporation, so far as the State of New York is concerned. We think this contention has no support in reason or authority."

In re Merriam's Estate, 36 N. E. Rep., 506.

"The United States cannot acquire property by devise when forbidden by State law.

"So in New York where a devise of land can be made only to a natural person, or such corporations as are created under the laws of the State authorized to take by devise, the devise of lands to the Government of the United States is void. *U. S. vs. Fox*, 94 U. S., 315. So is a bequest to the United States to be

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administered as a charity, when forbidden by the State in which it is made." *Levy vs. Levy*, 33 N. Y., 97.

"The truth is, that when the Government becomes the purchaser of property, it takes the title subject to the same rules as those which regulate the transfer of it to private persons. If it is subject to liens or incumbrances, it passes *cum onere*. So it is held in cases of ordinary maritime liens. If the Government becomes the owner of a vessel by purchase, forfeiture or otherwise, it takes a title subject to the same liens for salvage, wages, bottomry and other claims as would attach to it if sold to private persons. *United States vs. Wilder*, 3 Sumner, 314; *The St. Jago de Cuba*, 9 Wheat., 416; *The Copenhagen*, 1 C. Rob. Adm., 289."

Briggs & another vs. A Light Boat, 7 Allen, p. 297.

This case was referred to approvingly by the Supreme Court of the United States in *The Siren*, 7 Wallace, 152, and in *The Davis*, 10 Wallace, 19, where Judge Miller referred to it as one of the "most authoritative and well-considered cases on the subject."

The question was as to whether land had been forfeited to the State under delinquent land tax. It appeared that at the time the right of the Commonwealth accrued to the forfeiture a right of re-entry existed in the third person. The court held:

That the State could take only such right as the defaulting persons owned, and that the re-entryman's right was preserved.

Levaser vs. Washburn, 11 Gratt., 578-9.

Where an assignment had been made to the United States of a certain debt and the statute of limitations

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was pleaded, the court held that if the bar of the statute was complete before the assignment the plea of statute was good.

Levasser vs. Washburn, 11 Gratt., 578-9.

The cited authorities demonstrate that the Government takes only such right as the grantor has the right to give. If the grantor and the property within his hands is bound, the estate which passes to the grantee is thereby limited.

The William R. Trigg Company was bound by the supply lien law. That law does more than to impress a lien in favor of those who furnished supplies. It qualifies the right of property of a manufacturing company; it disables it from so contracting as to displace the lien.

The lien is "a special right which one has in that of which another has the general property; and, to the extent of the lien, it is an abridgment of the dominion which the latter has in the thing." *Hayden vs. Delay*, Litt. Sel. Cas. (Ky.), 278, 279.

25 Cyc. of Law, 661.

Section 1528 of the general statutes of South Carolina of 1882 provides that judgments recovered against railroad corporations for personal injuries should relate back to the date when the cause of action arose and should take precedence and priority of payment of any mortgage, etc., to secure bonds of a railroad company. Chief Justice Fuller, sitting on Circuit Court of Appeals, decided that:

"This section restricts the power of railroad corporations to execute mortgages of the franchises and property, to the extent that they cannot create a lien superior to that of judgments obtained against them for personal injuries incurred in the exercise of their franchise. * * *

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"These views are in accordance with those expressed by the Supreme Court, and regarded as obnoxious to no constitutional objection."

Southern Ry. Co. *vs.* Bouknight, 70 Federal, 446, appealed from Central Trust Co. *vs.* Charlotte, 65 Fed., 257, affirming same.

See also

Morawetz on Priv. Corp., § 1120.

Whatever the powers of individuals may be, it is certain that the powers of corporations cannot extend beyond the laws of their creation. Persons dealing with corporations do so with reference to the charters and the general laws by which the corporation itself is bound, and this is so, even in the case of a foreign corporation.

Silliman *et als.* *vs.* Fredericksburg, Orange & Charlottesville R. R. Co. (1876), 27 Grat., 119.

Bohmer & Osterloh *vs.* City of Richmond (1883), 77 Va., 445.

Bockover *vs.* Life Ass'n of America *et als.* (1883), 77 Va., 85.

Haden *vs.* Farmers & Mechanics Fire Ass'n (1885), 80 Va., 683.

Whitehurst's Adm'r *vs.* Whitehurst's Widow (1887), 83 Va., 153.

Knights of Pythias *vs.* Weller *et als.* (1896), 93 Va., 605; 25 S. E., 891.

"The lien of Purinton stands on his contract, and can have no other force and extent than what is derived from that. That of the material-men and laborers has its origin in the law independent of contract, and is to be allowed such an extent and operation as will carry into effect the intention of the law-maker. The lien of Purinton covers the whole interest which Knight had in the vessel, but no more.

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He could give no more. '*Nemo plus juris in alium transferre potest quam ipse habet.*'. Dig., 50, 18, 54. If this had been a contract of sale instead of hypothecation, the vendee, when the ship was completed, would have taken precisely the interest which the vendor then had. That would have been the whole ship, subject to the unpaid demands for labor and materials used in her construction, and would have taken precedence of these, if process was not sued out within four days after she was launched. But during that time the rights of the material-men and laborers continued under the statute, as privileged liens having precedence over all others. The builder could give no more extensive rights by a contract of hypothecation than he could by a sale. The title of Purinton under his contract must therefore be postponed to the liens of the opposing creditors who claim under the statute."

The Hull of a New Ship, Case No. 6859; 12
Fed. Cas., 862.

The Government was entitled merely to what the William R. Trigg Company could give, and all that that corporation could give was that which remained of the property after satisfying the supply liens. This would be the result in a contract between individuals, and the same result follows though the vessels were to pass to the United States. As was observed in Briggs and another against The Light Boats, cited *supra*, when the magic of sovereignty was resorted to to confuse that court:

"If the property in the ship or vessel is not changed, if it still remains in the builder, it is difficult to see how the use or purpose for which a vessel or ship is destined when completed, can in any way interfere with or control the right of the owner to dispose of

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it while the title and possession are both vested in him."

Briggs *vs.* Light Boat, 7 Allen, 296, 297.

See also McNeal & Co. *vs.* Howland, 16 S. E., 857.

Cited approvingly in *The Siren* and *The Davis, supra.*

Upon the same reasoning other vessels under construction for the Government have been held subject to mechanic-lien laws of a State.

The Revenue Cutter No. 1, Fed. Cas. 11,713.

The Revenue Cutter No. 2, Fed. Cas. 11,714.

The rights of the supply lienors, which the foregoing considerations have made manifest, are equally plain upon the following grounds:

The contract should be construed agreeably with the intent of the parties. Both the Government and the Trigg Company intended that the rights of the Government should be subject to the supply-lien law. This was an actual as well as a legal intent.

1.—*As to the Legal Intent.*

The Government was dealing with a Virginia corporation, which was subject to the provisions of its charter and of the general laws. The operation of the supply-lien statute under the authorities above cited, prevented the William R. Trigg Company from giving a right good as against supply lienors. Any attempt to give such right was beyond the scope of its corporate powers and was, therefore, void. It is not to be

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presumed that the William R. Trigg Company intended to commit an *ultra vires* act.

In that this law affected its rights under the contract, the Government must be charged with notice therewith.

"* * * It is said that * * * and that all the laws of a State existing at the time a mortgage or other contract is made which affect the rights of the party to the contract enter into and become a part of it, and are obligatory on all courts which assume to give remedy on such contracts. We are of opinion that the propositions last mentioned are sound; and if they are in conflict with the general doctrine of the exemption from State control of the chancery practice of the Federal courts, as regards mere modes of procedure, they are of paramount force, and the latter must to that extent give way. It would seem that no argument is necessary to establish the proposition that when substantial rights, resting upon a statute, which is clearly within the legislative power, come in conflict with mere forms and modes of procedure in the courts, the latter must give way, and adapt themselves to the forms necessary to give effect to such rights. The flexibility of chancery methods by which it moulds its decrees so as to give appropriate relief in all cases within its jurisdiction, enables it to do this without violence to principle. If one or the other must give way, good sense unhesitatingly requires that justice and positive rights, founded both on valid statutes and valid contracts, should not be sacrificed to mere questions of mode and form."

Brine *vs.* Insurance Co., 96 U. S., 643.

"The ground on which the decision below was placed was, that the laws having made the water rents a charge on the land, with a lien prior to all other encumbrances, in the same manner as taxes and assessments, the complainant took its mortgages subject to this condition, whether the water was in-

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roduced on to the lot mortgaged before or after the giving of the mortgage; and hence the complainant had no ground of complaint that its property was taken without due process of law. We do not well see how this position can be successfully controverted. * * * What may be the effect of those statutes, in this regard, upon mortgages which were created prior to the statute of 1852, it is unnecessary at present to inquire. The mortgages of the complainant were not created prior to that statute, but long subsequent thereto. When the complainant took its mortgages, it knew what the law was; it knew that, by the law, if the mortgaged lot should be supplied with Passaic water by the city authorities, the rent of that water, as regulated and exacted by them, would be a first lien on the lot. It chose to take its mortgages subject to this law; and it is idle to contend that a postponement of its lien to that of the water rents, whether after accruing or not, is a deprivation of its property without due process of law. Its own voluntary act, its own consent, is an element in the transaction. The cases referred to by counsel to the contrary, holding void a consent exacted contrary to the Constitution, have no bearing upon the present cases. * * * The law which gives to the last maritime liens priority over earlier liens in point of time, is based on principles of acknowledged justice. That which is given for the preservation or betterment of the common pledge is in natural equity fairly entitled to the first rank in the tableau of claims. Mechanics' lien laws stand on the same basis of natural justice. We are not prepared to say that a legislative act giving preference to such liens even over those already created by mortgage, judgment or attachment, would be repugnant to the Constitution of the United States."

Provident Institution vs. Jersey City. 113
U. S. Rep., 511, 514-515, 516.

See also *Van Stone vs. Stillwell & Bierce, etc., Co.*,
142 U. S., 136.

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The laws with reference to which the parties must be assumed to have contracted, when the mortgage was executed, were those which in their direct or necessary legal operation controlled or affected the obligations of such contract.

Connecticut Mut. Life Ins. Co. *vs.* Cushman, 108 U. S. Rep., 64-65.

See also Southern Ry. Co. *vs.* Bouknight, 70 Fed. Rep., 446, by Fuller, Chief Justice.

A statute of South Carolina in force when mortgage was made, provided that when cause of action against a railroad corporation should be prosecuted to judgment it should take precedence of any mortgage given to secure bonds. The court held that the statute referred to having been in force when the mortgage was made, and so having entered into and become a part of the contract, was valid and did not displace or impair the lien of the mortgage.

Central Trust Co. *vs.* Charlotte, C. & A. R. Co., 65 Fed. Rep., 259.

Affirmed in So. Co. *vs.* Bouknight, 70 Fed., 446, opinion by Judge Fuller, who—

Held that as the law provided that judgments for personal injuries recovered in actions commenced within twelve months from the time the injury was sustained should take precedence of any mortgage, deed of trust, or other security given to secure the payment of bonds made by railroad companies, and as this provision entered into the mortgage contract, and in accepting the mortgage the mortgagee gave his assent thereto, Bouknight was entitled to a priority of payment.

Southern Ry. Co. *vs.* Bouknight, 70 Fed. Rep., 446; Opinion by Fuller, Chief Justice.

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The above principles have equal application when the Government is contractor.

Brent vs. Bank of Washington, 10 Peters, 596.

Under these authorities the contract is to be construed precisely as if the Virginia supply lien statute were inserted as a provision of the contract between the William R. Trigg Company and the United States Government. If that statute had been physically inserted, no question could ever have been raised. The statute providing for *prior* lien in favor of the supply lienors, it would be manifest that any other right that the Government might be entitled to, by virtue of another term in the contract, would be such a right as would leave the supply lienors undisturbed.

The Galveston contract, which was the first of the three contracts, expressly recognizes that the rights which were given by the Trigg Company to the United States Government were subject, and were intended to be subject, to the lien laws of the State. Other sections of the contract have been hereinbefore referred to. The sixth sub-division of the 18th section of the contract is as follows:

“When a payment is to be made under this contract, as a condition precedent thereto the Secretary of the Navy may in his discretion require, for the protection of the party of the second part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights *in rem* of any kind against said vessel, or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired for or on account of any work done or any machinery, fitting, equipment, or material already incorporated as a part of said vessel or on hand for that purpose, or that such liens or rights have either been

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released absolutely or so subordinated to the rights of the Government as to make its lien for all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel."

In an official opinion given to the Secretary of the Navy on June 21st, 1900, Attorney-General Griggs says, with respect to a contract almost identical with the *Galveston* contract, and similar in all essentials to the *Mohawk* contract, as follows:

"Accompanying your letter is the form of a contract used by the Navy Department in making contracts for the construction of naval vessels, which form has remained in use substantially unchanged since 1883. By the terms of this contract the contractor undertakes, at his own risk and expense, to construct, in conformity with drawings, plans and specifications, the required vessel and to deliver the same at a specified place to such person as the Secretary of the Navy may designate. It is further provided in various clauses of the contract that the vessel shall not be accepted until after a specific trial, which can only be had after her full completion, and even then such preliminary acceptance is only conditional, the final acceptance being postponed to await the result of what is called a "final trial." The contract further provides that whenever a payment under it is to be made, as a condition precedent thereto the Secretary of the Navy may, in his discretion, require evidence satisfactory to him, to be furnished by the contractor, that no liens or rights *in rem* of any kind against said vessel or her machinery, fittings, or equipment, or the materials on hand for use in the construction thereof, have been or can be acquired for or on account of any work

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done or materials already incorporated as a part of said vessel or on hand for that purpose.

"I do not think the contract for the construction of a naval vessel, made in such form as I have referred to, is within the act of Aug. 13, 1894. The contracts there referred to relate to the construction of public buildings and the prosecution and completion of public works, and to repairs upon public buildings or public works. The object of the act was to afford a better method for enforcing against the contractor the claims of laborers and material men who had done work or furnished material upon property actually belonging to the United States, such as public buildings, which could only be erected upon land to which the United States had acquired a complete title—fortifications, river and harbor improvements, and such other things as are commonly understood under the designation of 'public works.' Of course, no mechanic's or laborer's lien would attach, by operation of any State statute, to property belonging to the United States on account of work done or materials furnished for improvements thereon. The statute of 1894 intended, in a measure, to remedy the defect in the means of collection at the disposal of laborers and material men against contractors upon such works. No such reason applies to cases of the construction of a specific article not attached to soil, the title of which is in the United States, but which is a mere movable article, the whole title to which remains in the contractor until its completion and acceptance by the Government. I assume it to be correct to say that if a State law authorized a lien for labor or materials furnished in the construction of a vessel under this form of contract, it would not be void or unenforceable because the vessel was in process of construction for the United States, the property to the same not yet having passed to the Government, and such liens could therefore be effectively enforced. The clause of the

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contract referred to making it optional with the Secretary of the Navy to require evidence that no liens or right *in rem* of any kind exist against said vessel imports that such is the opinion of the Navy Department."

This opinion was cited approvingly by the Supreme Court of Virginia, in the opinion of Judge Harrison, in *Penn. Iron Co. vs. Wm. R. Trigg Company*, 56 S. E., 329.

The above opinion was a recognition by the Government of the priority to which liens under State laws are entitled—but most important, it fixed the construction of the contract, that the very *intent of the contract was that the lien of the Government was to be subordinate to liens under the State law.*

It is not possible that there could be a document more conclusive of the intent of the contract than the above opinion. These contracts have been in use many years, and the Government is now estopped to claim in violation of its own construction.

United States vs. Alabama R. Co., 142 U. S., 621.
Brawley vs. United States, 96 U. S., 168.

2.—*Actual Intent.*

The 6th subdivision of the 18th section of the *Galveston* contract (Transcript of Record, p. 239) was an express recognition of the superiority of liens under the Virginia law, and an express recognition that the contract was entered into with reference thereto.

Whether the intent be implied or express, the effect is the same. The estate, equity, or right to which the lien of the Government refers is defined and limited by the intent, as well as by the positive provisions of the statute.

It is submitted that there is no merit in the Government's fourth assignment of error.

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Fifth Assignment of Error.

So far as counsel for the appellees understand the fifth assignment of error, it is, except as hereinafter stated, a repetition of the fourth assignment of error, and, therefore, counsel respectfully requests the court to consider the argument herein under that assignment as applicable here.

The concluding sentence of this assignment of error is evidently intended to present the claim that the rights of the Government were prior *in point of time* to the supply lienors.

There is nothing in the record to show such priority, and the fact is denied.

No right of the Government accrued at any time *as against supply lienors*. Whether or not the Government is prior in time, it is not prior in law. By the express terms of the statute, the supply lienors have a "prior lien." Accordingly the Supreme Court of the State declared in *Millhiser vs. The Gallego Mills Co.*, 101 Va., 579, that this priority existed upon the property of a manufacturing corporation as against all other liens, whether the same were acquired before or after the supplies were furnished. See also,

Fidelity Ins., etc., Co. vs. Roanoke, 81 Fed., 439.

A corporation may pass the *absolute title to its property*, free of the claims of supply liens, but it cannot by any act precedent or subsequent to the furnishing of the supplies, *grant a right therein* which will defeat supply liens.

The supply-lien statute was in existence long before the contracts with the Government were entered into. At the cost of repetition, we quote again from *Provident Inst. vs. Jersey City*, 113 U. S., 514-515, which seems to be quite conclusive of the point raised.

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“* * * What may be the effect of those statutes in this regard, upon mortgages which were created prior to the statute of 1852, it is unnecessary at present to inquire. The mortgages of the complainant were not created prior to that statute, but long subsequent thereto. When the complainant took its mortgages, it knew what the law was; it knew that, by the law, if the mortgaged lot should be supplied with Passaic water by the city authorities, the rent of that water, as regulated and exacted by them, would be a first lien on the lot. It chose to take its mortgages subject to this law; and it is idle to contend that a postponement of its lien to that of the water rents, whether after accruing or not, is a deprivation of its property, without due process of law. Its own voluntary act, its own consent, is an element in the transaction. The cases referred to by counsel to the contrary, holding void a consent exacted contrary to the Constitution, have no bearing upon the present cases.”

Provident Institution vs. Jersey City, 113
U. S. Rep., 514-515.

“‘We think this statute is remedial in its character and entitled to a liberal construction.’ If we are to construe this statute as contended for by counsel of the bank, we must interpolate into it the words, ‘except when the mortgage lien first attaches.’ This evidently was not the intent of the legislature. The statute was upon the statute books at the time the mortgages were given, and entered into the contract between the mortgagors and the mortgagees. The mortgagees must be presumed to have known that, when labor liens were filed, such liens would take precedence over the mortgages, and they are presumed to have contracted with this in view. This was mining property at the time the mortgage was taken. In *Warren vs. Sohn* (Ind. Sup.), 13 N. E., 863, the court held a similar statute constitutional, and that such statutory provision in force at the time

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of the execution of the mortgage entered into and became a part of the contract, and that, where such statutes provide that liens of a certain class shall have priority over all other liens, the mortgagor takes his lien subject to such labor liens as may be afterwards acquired under the statute."

Atlantic Dynamite Co. *et al.*, *vs.* Ropes Gold & Silver Co., 77 N. W., 939.

Third Assignment of Error.

This assignment consists of two errors, the first of which is distinctly stated, and the second of which is not plainly stated, nor was it ever presented to or passed upon by the Supreme Court of Appeals of Virginia. For that reason, the second section of the Government's third assignment of error is excepted to.

The third assignment of error is as follows:

That the said Supreme Court of Appeals of Virginia erred in holding and deciding in regard to the cruiser *Galveston* in the following particulars:

a. In deciding that the lien in favor of the United States upon the said cruiser and the materials on hand for use in her construction, reserved in the written contract, dated December 14, 1899, by and between the said William R. Trigg Company, party of the first part, and the United States, represented by the then Secretary of the Navy, party of the second part, as a paramount lien was not paramount to the claims of the supply creditors and of all other creditors of the said company, said lien, right, or privilege having been specially set up and claimed on behalf of the United States as a paramount lien under an authority exercised under the United States, to wit, the said contract of December 14, 1899,

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which was authorized by the laws of the United States and especially by the act entitled "An act making appropriations for the naval service for the fiscal year ending June 30th, 1900, and for other purposes," approved March 3, 1899.

b. In deciding that title to the said cruiser and the materials on hand for use in her construction did not vest in the United States by virtue of certain proceedings had after the institution of the said suit in the said chancery court and by virtue of certain provisions in the said last-mentioned contract, which title was specially set up and claimed by the United States by virtue of the said contract and of said proceedings; that is to say, under an authority exercised under the United States, the facts in regard to which are fully set forth in the "Stipulation with respect to the cruiser *Galveston*," dated June 22, 1903, filed with the record as a part thereof, and to which reference is hereby made.

Reserving the above exception, counsel for the appellees requests that the argument herein made under the fourth and fifth assignments of error, be considered as here repeated, as it is believed that argument is alike conclusive of the Government's third assignment of error.

In addition to what has been said under above assignments of error, counsel for the appellees desires to present the following considerations:

The Government conceded below, and will no doubt concede in this proceeding, that at the time of the filing of the supply liens in this cause the title and property of the *Galveston* were in the Trigg Company. Indeed, that concession is perhaps made in the assignment of error now under discussion, for the Government would hardly find it

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necessary to contractually stipulate for a lien on its own property.

The contract for the *Galveston* contained a provision for the making of installment payments.

The twelfth section of the contract (Transcript of Record, p. 237) authorizes the Secretary of the Navy to declare the contract forfeited in case of the omission of the shipbuilder to make satisfactory progress with the work, and further provides, that in event of the exercise of this option, the builder shall within sixty days *repay the Government the installments*, the Government being authorized to hold said vessel *as collateral security* for such refund.

The Secretary of the Navy, after the various supply liens were filed, elected to forfeit the contract, and hold said vessel as collateral. *At the time of this election, and for long prior thereto, the vessel had been in the possession of the receiver of the Virginia court, and that possession thereafter continued until the filing of the stipulation for the discharge of the Galveston.*

Now, what is the nature of the contract lien? Counsel has, he believes, successfully demonstrated that whatever its nature, the supply lien is superior to it.

It is proposed, however, to determine the class to which this lien belongs.

Possession was an essential of the common-law lien.

19 Amer. & Eng. Ency. Law, pp. 10-11.

The possession of the *Galveston* remained with the Trigg Company until long after the supply liens were filed. Therefore, the Government did not have a common-law lien.

Neither was it a pledge, for here, also, possession passes to the creditor.

3 Pomeroy Equity Jurisprudence, p. 2466.

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The right of the Government against the vessel is, therefore, analogous to the *hypotheca* of the civil law, or to an equitable lien or mortgage.

“ ‘Hypothecation’ is a term of the civil law, and is that kind of pledge in which the possession of the thing pledged remains with the debtor, the obligation resting in mere contract without delivery, and in this respect distinguished from ‘*pignus*,’ in which possession is delivered to the creditor or pawnee.

“*Whitney v. Peay*, 24 Ark., 22 (citing Burrill, Law Dict.; Story, Bailm., sec. 288.”

4 Words & Phrases, 3377.

Under our system of laws the condition which, under the civil laws, worked a hypothecation results in an equitable lien.

“It is necessary to divest one’s self of the purely legal notion concerning the effect of such contracts, and to recognize the fact that equity regards them as creating a charge upon or hypothecation of the specific thing, by means of which the personal obligation arising from the agreement may be more effectively enforced than by a mere pecuniary recovery at law.”

3 Pomeroy’s Equity Jurisprudence, p. 2469.

“The equitable lien is strictly analogous to, and is undoubtedly derived from, the *hypotheca* of the Roman law. *Hypotheca* was the right given to a creditor over a thing belonging to another, in order to secure the payment of a debt, while the property and possession remained in the debtor. It was thus distinguished from *pignus*, in which possession was delivered to the creditor, and he thus acquired a special property. *Hypotheca* was generally created by agreement, express or implied, between the parties; but in some cases it was created by operation of law, and then called *hypotheca tacita*, as over the property

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of a tutor in favor of his ward, and in favor of a wife over her dowry in the hands of the husband. See Sandar's Inst. of Justinian, 205, 206."

3 Pomeroy's Equity Jurisprudence, p. 2466 (f. n. 3).

An equitable lien is the same as an equitable mortgage.

"Any writing charging a debt on property though not a formal mortgage, is an equitable mortgage or lien."

Freely *vs.* Bryan, 47 S. E., 307 (W. Va.).

"Flagg *v.* Mann, 2 Sum., 486, 533, Fed. Cas. No. 4,847, per Story, J.: 'If a transaction resolve itself into a security, whatever may be its form, and whatever name the parties may choose to give it, it is in equity a mortgage (lien).'"

3 Pomeroy Eq. Jur., p. 2473.

"Analogous to mortgages considered from the purely equitable point of view are the important class of interests embraced under the denomination of 'equitable liens;' and I include within this general term those interests which are not regarded by the American Jurisprudence as true mortgages, but which are commonly called by English writers and judges 'equitable mortgages.' *An equitable lien is not an estate or property in the thing itself, nor a right to recover the thing—that is, a right which may be the basis of a possessory action; it is neither a jus ad rem nor a jus in re.* It is simply a charge or encumbrance upon the thing, so that the very thing itself may be proceeded against in an equitable action, and either sold or sequestered under a judicial decree, and its proceeds in the one case, or its rents and profits in the other, applied upon the demand of the creditor in whose favor the lien exists. It is the very essence of this condition that while the lien continues the possession of the thing remains with the

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debtor or the person who holds the proprietary interest subject to the encumbrance. The equitable lien differs essentially from the common-law lien, which is simply a right to retain possession of the chattel until some debt or demand due to the person thus retaining is satisfied; and possession is such an inseparable element, that if it be voluntarily surrendered by the creditor, the lien is at once extinguished."

3 Pomeroy's Eq. Jur., 2465, sec. 1233.

Such a lien was void as to third persons at common law.

"The mortgage on a vessel on the stocks without possession will not avail, by way of hypothecation against attaching creditors. *Goodenow v. Dunn*. 21 Maine, 86."

7 Bacon's Abridgement, p. 181.

Indeed, there is a preponderance of authority that there is no lien as between the parties themselves.

"Although formerly there was very little disagreement among the authorities in regard to the propositions that to complete a pledge the pledgee must take possession, and that to reserve the pledge he must retain possession, in late years there has been a growing laxity on the part of the judges and jurists, and there are authorities of great weight and responsibility holding that as between parties themselves an actual delivery may not be necessary and that the possession may be regarded constructively where the contract places it. However, the authorities seem to preponderate in support of the proposition that not only as against creditors and third persons, but even as against the pledgor, there can be no valid contract of pledge unless the property is delivered."

Pledge and Collateral Security. 22 Amer. & Eng. Ency. of Law, 853-4-5.

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As between the parties equity gives effect to such contracts though the law refuses to recognize them.

"SEC. 1234. *Origin and Rationale of the Doctrine.*—The doctrine of equitable liens is one of great importance and of wide application in administering the rights and remedies peculiar to equity jurisprudence. There is perhaps no doctrine which more strikingly shows the difference between the legal and the equitable conceptions of the judicial results which flow from the dealings of men with each other, from their express or implied undertakings. A brief explanation of the foundation and reasons upon which this branch of the equity jurisprudence rests is essential to a full understanding of the subject. It is sometimes, although I think unnecessarily and even incorrectly, spoken of as a species of implied trusts. If any reference to the theory of trust is made, it is more accurate to describe these liens as analogous to trusts; for while the two have some similar features, they are unlike in their essential elements. The common-law remedies upon all contracts except those which transfer a legal estate or property, such as conveyances of land and sales or bailments of chattels ("real" contracts, *contractus reales*), are always mere recoveries of money; the judgments are wholly pecuniary and personal, enforced in ancient times against the person of the judgment debtor by imprisonment, and in modern times against his property by means of an execution. This species of remedy is seldom granted by equity, and is opposed to its general theory. The remedies of equity are, as a class, specific. Although it is commonly said of them that they are not *in rem*, because they do not operate by the inherent force of the decree in an equitable suit to change or to transfer the title or estate in controversy."

3 Pomeroy's Eq. Jur., 2466-2467-2468-2469,
sec. 1234.

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It is apparent, from the foregoing authorities, that whatever the right was that the Government took under its contract, the *property* in the chattel still remained in the William R. Trigg Company.

If the property remained in the William R. Trigg Company, then, by the express terms of the supply lien statute, the supply lienors had the prior right.

See authorities cited and see, also, opinion appealed from. (Transcript of Record, 391).

Aside from its quality as a statutory lien, the supply lien is based upon equitable grounds. No supply lien could be claimed, except on the ground that the supply *was essential to the operation of the manufacturing company.*

“The law which gives to the last maritime liens priority over earlier liens in point of time is based on principles of acknowledged justice. That which is given for the preservation or betterment of the common pledge is in natural equity fairly entitled to the first rank in the tableau of claims. Mechanic’s lien laws stand on the same basis of natural justice. We are not prepared to say that a legislative act giving preference to such liens even over those already created by mortgage, judgment or attachment, would be repugnant to the Constitution of the United States.”

Provident Institution *vs.* Jersey City. 113
U. S. Rep., 516.

And see,

Smalley *vs.* Gearing, 79 N. W., 1118.

Hull of a New Ship, 12 Fed. Cas., 862.

Donnell *vs.* *The Starlight*, 103 Mass., 233.

Comparing the supply lien with the lien of the Government, it is found that the supply lien is superior to it in

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equity; further than this, that it is a legal lien, so made by statute. If there were no declaration of priority, these considerations would be sufficient to give priority to the supply lienors.

The priority of the supply liens rests upon the most solid and substantial ground. It exists because the Government, by the fair intendment of its contract, took and intended to take only such right from the Trigg Company as the Trigg Company could bestow. The very subject of their dealing was that which remained of the *res* after the supply liens were satisfied. The authorities cited in the argument of the fourth assignment of error, and hereinbefore cited in this assignment, sufficiently demonstrate the soundness of this position. If doubt remained, it would be entirely set at rest by the cases following:

“That doctrine, or rather the statute which the courts construed as giving a permanent lien under such circumstances, was in existence when the mortgage of the appellants was made. It entered into and became a part of their contract. They knew that the road was yet to be built, and that, while such building would add to the value of their security, the law gave to the men whose labor and money built it a lien superior to that of the mortgage. Now that the venture in which both embarked is to end in loss to one or the other of them, there is no judicial propriety in straining the law to limit the rights of one party rather than those of the other. If that law by its fair construction gives the mechanic a lien for a few thousand dollars on the whole road, instead of a part of it, the law should prevail. * * *

“Whoever takes a mortgage upon a building in the process of erection, should assume that the mechanics’ work is to go forward, and he may form some estimate of the amount that will be required.

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The same is not true in regard to repairs or enlargements."

Brooks *vs.* Railway Company, 101 U. S., 451-452.

"Here, again, the security originally contemplated was the hypothecation of the ship. It is a good and valid security, and covers all Knight's interest in it. But its operation is merely to put the lender of the money in the place of the builder. It gives him no greater rights than Knight had. It does not enable him to come in competition with those who have the statute lien."

The Hull of a New Ship, Case No. 6859; 12 Fed. Cas., p. 862.

"The principle is concisely stated by Mr. Justice Curtis, in the case of *The Kearsarge* (Case No. 7,762), as follows: 'The mortgagees can have no claim to be preferred over the lien-holder, because of their priority in time; for their interest in the vessel is as much subject to the statute lien as the interest of any other party.' This principle is recognized in the following cases: *The W. T. Graves* (*Id.*, 17,758); *Scott vs. Delahunt*, 65 N. Y., 128; *The Island City* (Case No. 7,109); *Donnell vs. The Starlight*, 103 Mass., 227; *Hull of a New Ship* (Case No. 6,859); *The Raleigh* (*Id.*, 11,539); *Shodes vs. The Collier*, 2 Pittsb. R., 304; *The St. Joseph* (Case No. 12,229); *Kellogg vs. Brennan*, 14 Ohio, 72; *Provost vs. Wilcox*, 17 Ohio, 359; *Jones vs. Kenn*, 115 Mass., 170."

Hiawatha, Case No. 6,453, 12 F. C., p. 110.

"The facts clearly indicate that the parties, at the time of making the trust deed, understood that liens superior to the lien of that instrument might accrue thereafter, and carefully provided for protection against them. The law in force in Texas at that time gave to all persons who might furnish material,

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fixtures, or tools, or who might labor in the construction of the said building, a lien upon the lands and the buildings to secure payment therefor. The parties contracted with reference to and in view of the law as it then existed, and must be charged with notice of such rights as might accrue in the course of constructing the building, even if they had not been actually contemplated by the parties: *Brooks vs. Railway Co.*, 101 U. S., 451."

Oriental Hotel Co. vs. Griffiths, 53 Am. St., pp. 797-798.

"We are of the opinion that the corporation could not avoid the lien given by statute by transferring its property before the notice of the intention to hold a lien was filed in the recorder's office. Such a construction of the statute would place it in the power of corporations to defeat the purpose the legislature had in view, as they might, upon approaching insolvency, defeat such liens by selling and transferring all their property. Those dealing with such corporations must know the law, and must take notice that the wages of employees are a lien upon their property, and that the title acquired by purchase or otherwise from a corporation is subject to such lien."

Aurora Nat. Bank vs. Black, 29 N. E. Rep., 398.

The United States are entitled to prior liens or rights, only where some statute provides for such priority.

"The right of priority of payment of debts due to the Government, is a prerogative of the crown well known to the common law. It is founded not so much upon any personal advantage to the sovereign, as upon motives of public policy, in order to secure an adequate revenue to sustain the public burdens and discharge the public debts. The claim of the United States, however, does not stand upon any

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sovereign prerogative, but is exclusively founded upon the actual provisions of their own statutes."

U. S. *vs.* Bank of North Carolina, 6 Peters, 34.

"It has long since been settled, by the solemn adjudication of the Supreme Court, that the United States do not possess any general right of priority or privilege over private creditors, for the satisfaction of the debts due to them, founded upon any general prerogatives belonging to the Government in its sovereign capacity; but that all the priority or privilege which the Government is at liberty to assert, is or must be founded upon some statute, passed by Congress, in virtue of its constitutional authority. This was expressly so held in *United States vs. Fisher*, 2 Cranch (6 U. S.), 358-396, and the doctrine has ever since been strictly adhered to. *U. S. vs. Hoose*, 3 Cranch (7 U. S.), 73 *Prince vs. Bartlett*, 8 Cranch (2 U. S.), 431; *Thellesson vs. Smith*, 2 Wheat. (15 U. S.), 396; *U. S. vs. Howland*, 4 Wheat. (17 U. S.), 108; *Conard vs. Atlantic Ins. Co.*, 1 Pet., 441, 26 U. S., 387; it is not here, as it is in England, where the sovereign is entitled, in virtue of his prerogative, to a priority over private creditors, for satisfaction of debts due the crown. Com. Dig. 'Prerogative' D., 89; *Id.*, 'Debt,' G. 8, G. 9."

United States vs. Canal Bank, Fed. Cas. No. 14,715; 25 Fed. Cas., 278.

See also—

Conard vs. The Atlantic Ins. Co., 1 Peters, 441.

Briggs vs. Light Boat, 93 Mass., 183.

U. S. vs. Amer. Surety Co., 111 Fed., 914.

U. S. vs. Heaton, 128 Fed., 414.

U. S. vs. Detroit Lumber Co., 131 Fed., 668.

C. C. A. U. S. vs. Amer. Surety Co., 135 Fed. 79.

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Here there is no statute giving priority, therefore, none exists.

Assignment of Error "B," in Third Assignment of Error.

As has heretofore been noted, this assignment of error is not clear and for that reason has been excepted to. It is, however, perfectly apparent from this assignment of error, that the Government does not pretend that there was any vesting of title in the Galveston until "certain proceedings had after the institution of the suit in said chancery court." Now very many of the liens which are here set up were filed in the chancery court of the city of Richmond on the very day of the institution of the suit, and before suit was instituted. Certainly the error could not have application to these, because any vesting of title in the Government after their liens were filed must have been, of course, subject to their lien. Very many other liens were filed on the same day, and after the institution of the suit. All the liens were filed before the date on which the record shows any proceedings whatever by the United States. What is the error complained of? Which of the liens does the error refer to? If it is contended that the error extends to all the liens, why does it have this effect?

So far as this assignment of error is intelligible to counsel for the appellees, he submits the authorities heretofore cited in this brief as conclusive against the Government.

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Second Assignment of Error.

This assignment of error relates to the Mohawk. It is governed by precisely the same rules which obtain in the case of the Galveston. The contract varies from that of the Galveston only in that the Mohawk contract does not contain the specific recognition of the binding force and priority of the Virginia lien laws, which is contained in subsection 6 of the 17th section of the Galveston contract (see Transcript of Record, p. 239).

The Government claims that the joint resolution requiring the Secretary of the Treasury to insert in the contract a provision for a lien, gives a statutory lien. The appellees contend that it neither gives a lien, nor did Congress intend it to have that effect.

This resolution is as follows:

"That the Secretary of the Treasury be, and he is hereby authorized to make partial payments, from time to time, upon contracts, and all contracts hereafter made for the construction of vessels for the Treasury Department, but not in excess of 75 per cent. (75%) of the amount of the value of the work already done; and that the contracts hereafter made shall provide for a lien upon such vessels for all advances so made:

"*Provided*, That nothing in this joint resolution shall be construed to hereafter authorize any partial payments, except on contracts stipulating for the same, and then only in accordance with such contract stipulations."

26 Stat. at Large, pp. 582-3.

A joint resolution and not an act was used.

"Joint resolutions are chiefly for administrative purposes of a local or temporary character. They

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are intended as rules for the government of public officers and not laws to govern the public."

26 Am. & Eng. Enc. Law, 560, and notes.

The joint resolution does not create a lien. It directs the Secretary of the Treasury to reserve a lien. It might have said: "The U. S. shall have a lien for all advancements," but this it refrained from doing, purposely, it would seem. Instead it tells a public officer in making a contract to reserve a lien. In so doing it clearly contemplates a *contractual* and not a *statutory* lien. On this (and other ground) U. S. *vs.* Snyder, 149 U. S., 210, is readily distinguishable. That a contractual lien was intended appears from the fact that payments are expressly allowed on contracts theretofore made, in which no lien is reserved and for which no lien is created.

See 1 Jones on Liens, sec. 105.

Even if the joint resolution were held to create a statutory lien, which counsel for the appellees claims it does not, the same questions would present themselves as arise in the case of the *Galveston*.

(A) The subject to which the lien related was plainly confined to the grantor's rights, and, therefore, it related to so much of the *res* as remained after the satisfaction of the supply liens.

(B) Whether or not it was a statutory lien, its rank was not fixed. No Federal statute gives it priority. Therefore it has no priority. Whether statutory or not, it is inferior in dignity to "prior liens," *i. e.*, the supply liens.

(C) In that the installment payments were to be made only at the opinion of the Secretary, the Secretary had the right to refuse to make payments, or, on the making of the

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payments, to take title to the vessel. In either event, the rights of the Government would have been fully protected.

It was urged below that from the very nature of things it must be supposed that the Government was contracting for a *prior* lien in both the *Galveston* and the *Mohawk* contracts.

But it is respectfully submitted that no such presumption can arise in the case of the Government any more than in the case of an individual. Contracts are not usually made with a view to the bankruptcy of the contracting parties. All the operations of commerce are founded upon the expectation of success. There is seldom a careful antecedent survey of consequences in the event of failure.

First Assignment of Error.

This assignment of error is based upon a provision which appears in paragraph 211 of the specifications for the construction of the dredge *Beneguard*.

This section is mentioned in the report of the Commissioner, and a copy of it appears on page 170 of the transcript of record.

• It provides that:

"the parts paid for under the system of partial payment above specified shall become thereby the sole property of the United States."

To this assignment counsel for the appellees replies.

This section, of course, is to be read in connection with the other provisions of the contract and specifications, and with the law governing such contracts. When this is done, it will be found that the above language merely

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results in a lien or charge upon such "*parts*," in no manner passing the title to the parts, much less to the vessels in which such parts are incorporated.

It will not be disputed that as a general rule no title passes to a vessel under construction.

"That the price is to be paid in installments as the work progresses; that the vessel is to be built under the superintendence of an inspector employed by the purchaser; that this inspector has the power to approve or reject the materials to be used in constructing the vessel; that the vessel is insured for the benefit of the purchaser; that the contract stipulates that the materials, as and when approved, should become the property of and belong to the purchaser. In other words the passage of title to a chattel to be constructed is a matter of intention of parties to be arrived at from the terms of the contract between them; the rule being that no property passes until completion and that none of the above mentioned circumstances indicated an intention in the parties to vary this general rule by the contract."

2 Mechem on Sales, sec. 755.

See also 2 Parsons on Contracts, 8th ed., 259.

"The cases on this subject were in much conflict. In the earlier English cases much reference is made to provisions in the English statutes and usages as to builders' certificates and the grand bill of sale, which do not exist in our own. We consider, however, that the law is now well settled, especially in this country and by recent cases. If it be the intention of the parties that the builder should sell and the purchaser buy the ship before it is completed, and at different stages of its progress, and a bargain is made sufficiently expressive of this intention, there is no reason whatever why the law should not enforce such a bargain. But no such bargain

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would be implied from the mere fact that payment is to be made by installments, whether they are graduated merely on time, or on the state or condition or progress of the ship. Nor would this implication arise from, or be greatly aided by, the employment by the purchaser of a superintendent. These facts might assist in identifying the structure, or sustaining an action for a breach of the contract; and they might bear on the amount of damages. But they would not be sufficient to prove an actual sale and transfer of the property by the payment of an installment, so that after such payment, if the property were lost or destroyed, it would be the loss of the purchaser."

2 Parsons on Contracts, 259-260.

The rule is supported by the following authorities:

Merritt vs. Johnson, 7 Johnson (N. Y.), 473; *Andrews vs. Durant*, 11 N. Y., 34; *People vs. Commissioners*, 58 N. Y., 244; *Hall vs. Green*, 1 Houston (Del.), 546; *Shaw vs. Smith*, 48 Conn., 306; *Yukon River Steamboat Co. vs. Brotto*, 136 Cal., 538; *Williams vs. Jackman*, 16 Gray, 514; *Low vs. Austin*, 20 N. Y., 182; *Briggs vs. A Light Boat*, 7 Allen (Mass.), 287; *Wright vs. Tetlow*, 99 Mass., 397; *Forsythe vs. Dickson*, 1 Grant Case, 26 (Penn.); *Scull vs. Shakespeare*, 75 Pa., 297; *Lang's Appeals*, 81 Pa. St., 18; *Coursin's Appeal*, 79 Pa. St., 220; *Strong vs. Dinniry*, 175 Pa. St., 586; 34 Atl., 919; *Haney vs. Schooner "Rosabelle"*, 20 Wis., 261; *Elliott vs. Edwards*, 35 N. J. L., 265; *West Co. vs. Trenton Co.*, 35 N. J. L., 517; *Stevens vs. Shippen*, 29 N. J. Eq., 602; *The Revenue Cutter No. 1*, Fed. Cas. No. 11,713; *The Revenue Cutter No. 2*, Fed. Cas. No. 11,714; *The Sam Slick*, Fed. Cas. No. 12,283; *Clarkson vs. Stevens*, 106 U. S., 505; 27 L. Ed., 139; *The Poconoket*, 67 Fed., 262; *The John B. Ketchum*, 97 Fed., 872; see also *Trigg vs. Bucyrus Company*, 51 S. E., 175-176.

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All the foregoing cases maintain the proposition that the appointment of an inspector, the paying of installments, and the like, are consistent either with the retention of ownership by the vendor or its passage to the vendee; that the legal intendments of the contract being to place the ownership with the vendee, such stipulations are not sufficient to rebut presumptions of law arising from the contract.

"Nor is the result changed when the person for whom the vessel is to be built installs expensive boilers or engines."

The John B. Ketchum, 97 Fed., 872.

Now, the general rule being that no title passes, it is incumbent upon contracting parties to plainly express their variant intent.

All persons are presumed to know the law; therefore the makers of this contract are presumed to be aware of the legal intendments that follow from their contract; knowing this, if their intent varied from the presumption, presumably they would have inserted specific provisions to secure that result. The cases last cited above, as well as those following, support this view of the law.

"I should say so marked a circumstance would be stated in words of unequivocal import and would not be left to rest upon construction, if a change of property was really intended."

"If it was intended that certain parts of the vessel should pass to the defendants as the work progressed and was paid for, it was very easy for the parties to have so provided in the contract in express terms. As they did not do this, we must gather the intent from the contract as expressed."

Andrews vs. Durant, 11 N. Y., 35—1854.

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"This is a question of first impression in this State, and its solution must depend upon the construction to be given to the contract between the parties. It was undoubtedly competent for them to have agreed in express terms (if such had been their intention) that the property in the unfinished sloop should pass from Tubbs and vest in Hall upon payment by him of the first installment. But they have not done so."

Hall *vs.* Green, 1 Houston (Del.), 546; 71 Am. Dec., 96—1858.

"Under a contract for supplying labor and materials and making a chattel, no property passes to the vendee till the chattel is completed and delivered or ready to be delivered. This is the general law. It must prevail in all cases unless a contrary intent is clearly expressed or clearly implied from the terms of the contract."

William *vs.* Jackman, 16 Gray, 514 (Mass.)—1860.

"If, taking all the stipulations together, it is clear that the parties intended the property should vest in the purchaser during the progress of the work and before its completion, effect will be given to such intention, and the property will be held to pass accordingly; but, on the other hand, it will not be deemed to have passed out of the builder unless such intent is clearly manifested, but the general rule of the law will prevail."

Briggs *vs.* Light Boat, 7 Allen (Mass.), 287.

"In the absence of any special contract to the contrary, the title to the vessel would have continued in the builder."

Elliott *vs.* Edwards, 35 N. J. L., 265.

"In the absence of clear and specific agreement to the contrary, that under a contract for the building of

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a vessel no property vests in the person for whom it is agreed to be built until it is finished and delivered."

Haney vs. The Schooner "Rosabelle," 20 Wis., 261.

The only expression in the contract or specifications upon which the Government relies or can rely, to indicate the intent that property in the vessel passed to the Government, is the above quoted section 211 in the specifications. In all essential particulars that provision is the same as the provision in the contract for the Stevens battery, under review in *Clarkson vs. Stevens*, 106 U. S., 516, and this contention is disposed of by Mr. Justice Matthews, who said:

"Much stress is laid, in argument, upon that provision of the contract which required all materials received at the yard for use in constructing the steamer to be distinctly marked with the letters 'U. S.,' and declared that they should become the property of and belong to the United States. But it does not follow, because the materials provided for that use were declared to be the property of the United States, it was intended they should remain so after becoming part of the structure. Such a precaution might well have been suggested, as a security against a diversion of the materials to any unauthorized use, or to preserve them to the United States, in case, by reason of the failure of the work or from any other cause, they should not be used in the vessel. Indeed, as is remarked by the learned judge who delivered the opinion of the Court of Errors and Appeals in this case, the express declaration that defined the property in the unused materials seems to exclude the implication sought to be raised as to the property in the unfinished ship; for the inference is obvious, from the particularity of such a provision, that the larger interest would not be left to mere intendment."

Clarkson vs. Stevens, 106 U. S., p. 516.

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Is it to be supposed that if it were the real intent of the contract that the United States was to take title to the *Ben-guard* that it would have depended upon section 211 of the specifications, the work of an engineer or architect to express that intent, or that the intent would have been expressed in the language of section 211?

There is a variance of intent between the contract and the specifications, and the contract controls.

See—

- Williams *vs.* Fitzmaurice, 3 H. & N., 844.
- Neelon *vs.* Toronto, 25 Can. Supm. Ct., 579.
- Andrews *vs.* Tucker, 127 Ala., 602.
- Tischler *vs.* Apple, 30 Fla., 132.
- Meyer *vs.* Berlandi, 53 Minn., 59.
- Boteler *vs.* Roy, 40 Mo. App., 234.
- Isaacs *vs.* Dawson, 174 N. Y., 537.
- Palladino *vs.* New York, 56 Hun. (N. Y.), 565.
- Demarest *vs.* Haide, 52 N. Y. Super. Ct., 398.
- Reichert *vs.* Brown (Supm. Ct., App. T.), 38 Misc. (N. Y.), 782.
- 30 Amer. & Eng. Ency. of Law, 1201-1202.

There are provisions of the contract which indicate intents inconsistent with the notion that the property passed.

The fourth section authorizes the Government to annul the contract if due progress is not made. This is inconsistent with the intent to pass title.

“Another and decisive indication of the intention of the parties that no property was to pass until the completion and acceptance of the vessel is found in that clause of the contract by which it is stipulated that if the agent of the United States at any time

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during the construction of the vessel should be of opinion that the contract was not duly complied with, or that due progress was not made in its execution, or if the builder was negligent or careless, he might declare the contract to be forfeited, and thereupon the same should become null and void. Such a reservation is inconsistent with the acquisition of any title by the United States in the unfinished vessel. It is unreasonable to suppose that the parties intended to insert a stipulation the effect of which would be that the Government would acquire a right of property in the vessel under a contract which they might at any time rescind. The only reasonable interpretation of this stipulation, taken in connection with other parts of the agreement already referred to, is, that the title to the vessel was not to pass out of the builder until it was finished and accepted by the United States, and thereupon the right to the purchase money would become fixed and absolute. The builder was not to part with his property till he received compensation; the Government was not bound to accept the vessel unless it conformed in all respects to the contract."

Briggs & another *vs.* A Light Boat, 7 Allen (89 Mass.), 294.

It is perfectly plain from an examination of the contract, that it is entire and that the instalment payments are made upon the faith of the "*complete*" performance of the entire contract, the doing of "*all*" the work, the supplying of "*all*" the materials. (See contract, page 406 *et seq.*, Transcript of Record, and see opinion of the Supreme Court of Appeals of Virginia, p. 388, Transcript of Record.)

The ninth section of the contract is as follows:

"9. It is further agreed by and between the parties hereto that until final inspection and acceptance of, and payment for, all the material and work herein

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provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the party of the first part to reject any defective work or material, or to require the fulfillment of any of the terms of this contract."

Now, this language plainly indicates a "final inspection." It also indicates "prior inspections" and "prior payments," and "prior acts." It further indicates that the "final inspection" is to be when "all the material and work herein provided for" has been done. The only partial payments for which the contract provides were the partial payments referred to in the quoted section 211 of the specifications, on which the Government relies. Now, reading section 9 of the contract in connection with section 2 of the contract and section 211 of the specifications, it is apparent that the Government reserves the right at the period of final acceptance to reject property which had already been vested in it, if section 211 of the specifications had the effect of vesting the property, as the Government contends.

Under these circumstances the property did not vest.

"Accordingly, we are of opinion, that the fact that advances were made out of the purchase money, according to the contract, for the cost of the work as it progressed, and that the Government was authorized to require the presence of an agent to join in certifying to the accounts, are not conclusive evidence of an intent that the property in the ship should vest in the United States prior to final delivery. *Indeed, in reference to the latter circumstances, it is noticeable, as indicating a contrary intention, that the authority of the inspecting officer was expressly limited, so that it should not extend to a right to judge of the quality and fitness of the materials or workmanship, such matters and all others concerning the performance of the contract*

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being reserved for determination after the completion of the work, as a condition of acceptance and final payment." (Italics mine.)

Clarkson vs. Stevens, 106 U. S., p. 515-516.

The contract provided that the relator shall have a lien on and OWNERSHIP in the vessel "as its building progresses up to the amount or amounts paid on account of its contract; such lien and ownership to attach simultaneously with such payments; and further, that the builder should keep such vessel and materials fully protected by insurance against fire; the policies of insurance for same to be for account of and made payable to relator. This, taken in connection with the statement of relator that the steamers were being built under contract and that none of them had been delivered and that payments made to the contractors had been made on account of their contracts, characterizes the interest of the relator as being not an absolute ownership but only an interest in the nature of a lien for its money advanced which might or might not ripen into a title to the vessel in construction."

People vs. Com'rs, 58 N. Y., 244.

See also

Clarkson vs. Stevens, 106 U. S., 517.

In the case of the Revenue Cutter No. 1, there had been an actual sale, by builder's bill of sale, of the incomplete vessel at the time of the payment of the first instalment.

Liens were filed by those who furnished materials both before and after the date of the sale.

The court said:

"We are satisfied from an examination of the contract between the Government and Merry & Gay that the title was in the latter until the vessel was completed and delivered to the Government in September,

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1857, and received and accepted by him in fulfillment of the terms of the contract."

The Revenue Cutter, No. 1, Fed. Cas. No. 11,713, 20 Fed. Cas., 563.

In addition to what has been here said, counsel for the appellees wishes to refer to and incorporate in this brief the report of Commissioner Massie on this subject, which appears on pages 169-179, inclusive, of the transcript of record.

Giving to the *Benyuard* contract and specifications the full effect claimed by the Government, the supply lienors are yet entitled to a claim on that vessel.

This claim is the subject of the third contention set forth in the petition of the supply lienors at the bottom of page 13 of the transcript of record. The exact amount of the claim is \$39,860. This claim results from the following:

Giving the construction to the *Benyuard* contract insisted upon by the Government, "the parts paid for" become the property of the United States. The parts not paid for, therefore, remain the property of the William R. Trigg Company. At the time of the delivery of the *Benyuard* to the Government, that vessel was about 72 per cent. completed. On the basis of the contract, \$182,410 had been earned, of which only \$142,550 had been paid; therefore, in taking over the vessel, the Government took not only the parts which it had paid for and which, according to its theory, belonged to it, but \$39,860 which belonged to the Trigg Company and

these lienors; therefore, upon its own showing, a decree should be rendered for that sum.

If the contract for that vessel should have been recorded, as contended in the petition (Transcript of Record, pp. 15-22), and later insisted upon in this brief, then the recovery should be \$182,410, that being the value of the vessel under the contract.

The Virginia Recordation Statute Binds the Government.

In his argument on the Fourth and Fifth Assignments of Error, counsel for the appellees contended, among other things, that the Virginia supply lien statute indirectly bound the Government because it bound its grantor. That its operation was not to divest the United States of a right which had accrued to it, but that it operated upon the grantor and the *res* before the right of the Government accrued. And upon this proposition many, and, it is hoped, convincing authorities, were cited. Upon the same reasoning and upon the same authorities, counsel for the appellees contends that the recordation statute of the State (section 2465, Pollard's Code, 1904) also binds the Government. Though this point was raised in the court below (see Ninth Assignment of Error, Transcript of Record, p. 15), that court having favorably disposed of the contention of these appellees upon other grounds, did not pass upon the ground. It is nevertheless now presented to this court in support of the judgment appealed from, on the authority of—

Wood *vs.* Skinner, 139 U. S., 293-5.

Murdock *vs.* Memphis, 20 Wall., 590-636.

The provisions of section 2465 are as follows:

"SEC. 2465. Every such contract in writing and every deed conveying any such estate or term, and every deed or gift, or deed of trust, or mortgage conveying real estate or goods and chattels, and every

bill of sale or contract for the sale of goods and chattels when the possession is allowed to remain with the grantor (and any such bill of sale or contract shall be in writing and signed by the vendor), shall be void as to subsequent purchasers for valuable consideration without notice, and creditors, until and except from the time that it is duly admitted to record in the county or corporation wherein the property embraced in such contract, deed, or bill of sale may be; provided, that the possession of any such estate or term, without notice of other evidence of title, shall not be notice to said subsequent purchasers for valuable consideration."

2nd vol., Pollard's Code, 1904.

It is apparent that the language of this statute is applicable to the liens reserved in the *Mohawk* and *Galveston* contracts, as well as to the alleged passing of the title under the provisions of section 211 of the specifications for the *Ben-guard*. In neither case is it pretended that there was any delivery of the property to the Government. It was in order to get this delivery that the stipulation upon which we now rely was entered into by the Government. It is to be noted that the statute provides that the instruments within its scope shall be *void as to creditors*, in event its provisions are not complied with. Applying the statute, the reserved liens in the *Galveston* and *Mohawk* contracts, and section 211 of the *Ben-guard* specifications, are void as to creditors. As to the creditors, those contracts are as if they had never been executed, and so the courts have declared.

"This court cannot construe away a plain statute to avoid cases of individual hardship. * * * The effect of the statute is that as to the appellants Chambers must be regarded as entitled to the Danville lot at the date of their judgment against him, in like manner and to the same extent as if he never had aliened."

See—

March, etc., *vs. Chambers*, 30 Gratt., 304.
 Dobyn Adm'trix *vs. Waring*, 82 Va., 169.
Price vs. Wall, 97 Va., 336.

The recordation statutes apply to equitable mortgages.

See *The Vigilancia*, 68 Fed., 784; *Battison vs. Hobson* (1896), 2 Ch., 403; *Pierce vs. Jackson*, 56 Ala., 599; *O'Neil vs. Seixas*, 85 Ala., 80, overruling dictum in *Bailey vs. Timberlake*, 74 Ala., 221; *Putnam vs. White*, 76 Me., 551; *Alderson vs. Ames*, 6 Md., 52; *General Ins. Co. vs. U. S. Ins. Co.*, 10 Md., 517, 69 Am. Dec., 174; *Edwards vs. McKernan*, 55 Mich., 520; *Clamorgan vs. Lane*, 9 Mo., 446; *Carter vs. Holman*, 60 Mo., 498; *Crane vs. Turner*, 7 Hun. (N. Y.), 357; *Tefft vs. Munson*, 65 Barb. (N. Y.), 31, 57 N. Y., 97; *Tarbell vs. West*, 86 N. Y., 280; *Todd vs. Outlaw*, 79 N. Car., 236; *Russell's App.*, 15 Pa. St., 319; *Butler vs. Maury*, 10 Hump. (Tenn.), 420; 24 Amer. & Eng. Ency. Law, p. 81; *Hill vs. Marsden*, 178 Mass., 285; *Sidenback vs. Riley*, 111 N. Y., 560; *Byrd vs. Wilkinson*, 4 Leigh., 266; *Jarvis vs. Dutcher*, 16 Wis., 307.

"The plaintiff argues that the agreement could not be recorded; that, if it had been kept, presumably the mortgage would have been recorded; and that the equitable lien or trust which he is seeking to establish is not subject to the registration laws. But the equitable interest must follow the contract upon which it is founded, and therefore the plaintiff's position must be that, in equity, he is to be regarded as a mortgagee, and the trouble is that an unrecorded mortgage of chattels remaining in the possession of the mortgagor is void as against any person other than the parties thereto, by the express words of Pub. St., c. 192, sec. 1. The law is different as to mortgages of land (*Id.*, c. 120, sec. 4); and therefore *Pinch vs. Anthony*, 8 Allen, 536, which enforced a written agreement for security against a purchaser of the land concerned, with notice, has no bearing upon the present case. *Huntington vs. Clemence*, 103 Mass., 482, shows that an agreement like the present would not be enforced at law against attaching creditors. The policy of the statute to secure publicity is not affected by the question whether the proceedings are at law or in equity (*Blanchard vs.*

Cook, 144 Mass., 207, 226, 11 N. E., 83); and its words admit of no exception on the ground that the purchaser has notice (*Bingham vs. Jordan*, 1 Allen, 373, 374). We are of opinion that an unrecorded agreement to give a chattel mortgage stands no better than an unrecorded mortgage, as against the purchaser of the goods. It is unnecessary to consider other objections to the plaintiff's case. Bill dismissed."

Smith vs. Howard, 53 N. E., 143-144.

See also *Kerr vs. Moon*, 9 Wheat, 565.

Now if the contracts are to be taken as if they had never been executed, it follows that as to the supply lien creditors the property never passed out of the hands of the William R. Trigg Company.

The Trigg Company was without power to grant a right in any of these vessels good as against creditors. *In order that the contract should be good against creditors, the act of the law must coöperate with the act of the grantor.* As to creditors, until recordation, the title remains in the grantor, and nothing can divest the title except recordation. The Virginia recording statutes thus operate precisely as did the inheritance tax law of New York, which was held binding on the United States, as to which the Supreme Court of the United States said:

"The law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and terms within which property, real and personal, within its dominion may be transferred by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. * * * If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to

be required by its interests or policy.' To the same effect is *United States vs. Fox*, 94 U. S., 315.

"We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it."

United States vs. Perkins, 163 U. S., 629-630.

See also

Knowlton vs. Moore, 20 Sup. Ct. Rep., 752-3.

Therefore by its unrecorded contracts, the Government took all that the Trigg Company could give, namely, *its interest*. It could not take an interest good as against the creditors of the Trigg Company, for that interest only passes when the law is complied with, and is derived not from the act of the grantor, but from the act of law.

It is evidently the practice of the Government to observe the recordation laws of a State wherein they acquire property.

See *Ryan vs. U. S.*, 136 U. S., 86.

And the language of Judge Harlan, on page 86, would seem to indicate that it was from the operation of the recordation that title passed.

"If he had not been bound by the contract to sell the lands, at the time he withdrew his offer, the placing of the deed upon record would have been unauthorized, and might not have passed the title as between the defendant and the United States."

Ryan vs. United States, 136 U. S., 86.

The record of the above case, however, is not before the writer, and whether the citation is applicable is not entirely clear. At any rate, the case cited, in effect, holds that the United States, when purchasing from an individual the land needed for a military barracks, is bound by the State statute of frauds. The only reason the United States could be bound by such a statute would be a reason which would also bind them to the observance of a recordation statute, in that both operate to prevent fraud by preventing the divesting of the title of the grantor save by the means marked out by the statute; in the one case a writing is required; in the other case, the recordation of that writing.

See *Burbank vs. Conrad*, 96 U. S., 292-3.

See also *Stewart vs. Platt*, 101 U. S., 737.

Montgomery vs. Wright, 8 Mich., 147-148.

If it is to be regarded as a hardship upon the United States to require it to pay the supply lienors, it must be admitted that it is also a hardship upon the lienors to refuse payment of the statutory liens. The contract provided a method, which if followed, would have prevented both hardships.

"It would have been competent for the United States, if they wished to avoid the inconvenience or danger of delay arising from liens in favor of private persons, to make their contract in such form as to divest the builder of any title to the property in the vessel during the process of construction, or to stipulate for the application of the purchase-money to the extinguishment of all claims for material furnished to the builder. But under the contract into which they entered, for the reasons already given, we can see no valid ground for refusing the claim of the petitioners to enforce their lien on the vessel in con-

troversy. See the Revenue Cutter No. 1, 21 Law Reporter, 281."

Briggs and Another vs. A Light Boat, 7 Allen, 298.

All of which is respectfully submitted.

R. G. BICKFORD,

Counsel for Ansonia Brass & Copper Co., Babcock & Wilcox Co., Brown Hoisting Machine Co., Carnegie Steel Co., Chesapeake & Ohio Coal Agency Co., Fore River Ship & Engine Co., Hilles & Jones Co., Keasby & Mattison Co., F. H. Lovell & Co., Merchant & Company, Morris, Wheeler & Co., Southard & Co., Newport News Shipbuilding & Dry Dock Company, American Steel Casting Co., Blake Mfg. Co., Carbon Steel Co., Chicago Pneumatic Tool Co., Cleveland City Forge & Iron Co., Hendricks Bros., Laidlaw-Dunn-Gordon Co., Lunkheimer Co., J. L. Mott Iron Works, National Tube Co., Sayen & Schultze.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 458.
v.	
ANSONIA BRASS AND COPPER COMPANY, American Steel Casting Company, et al.	

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE
STATE OF VIRGINIA.

**REPORT NO. 1 OF COMMISSIONER MASSIE TO THE
CHANCERY COURT OF THE CITY OF RICHMOND.**

FIRST NATIONAL BANK OF RICHMOND, ET AL.	}
v.	
WILLIAM R. TRIGG CO. AND OTHERS.	

REPORT OF COMMISSIONER MASSIE.

To the Hon. DANIEL GRINNAN, *judge of the chancery
court of the city of Richmond:*

The bill in this suit was filed in your honor's court on December 23, 1902, a decree was entered on the same day appointing a receiver, then followed numerous receiver's reports and many petitions, upon which decrees were entered, and on July 28, 1903, the first decree of reference was entered. The papers in the cause were submitted under this decree to Commissioner J. R. V. Daniel and the taking of

testimony before him was begun on September 21, 1903, and continued, with adjournments from time to time, until November 2, 1904. A special report was made by Commissioner Daniel on a claim of the Bucyrus Company on December 16, 1903; but before completing his full report Mr. Daniel suddenly died on the 26th of November, 1904, and the cause was referred on December 1, 1904, to the present commissioner, with directions to consider the evidence already taken, and to proceed to make his report with all possible speed. (File No. 298.)

The cause was orally argued before Commissioner Daniel upon several occasions, and some written notes were also filed before him. The present commissioner greatly regrets that he has not had the benefit of hearing any discussion of the case; and as many novel questions are involved, he makes his report with natural diffidence.

The present report is not made under the original decree of reference, but under the decree entered on January 30, 1905 (File No. 324); and before answering the specific inquiries of this decree, it seems proper to the commissioner to consider certain general propositions that seem to him to lie at the root of the whole matter.

FIRST. THE LABOR AND SUPPLY LIEN STATUTE.

I. ACTS 1876-1877, C. 200, P. 188.

This act was approved March 21, 1877, and bore the title:

“An act to secure the payment of wages or salaries of certain employees of railway, canal, steamboat,

and other corporations." * * * and gave a prior lien on the franchises, the gross earnings, and all the real and personal property used in operating the same, of any railroad, canal, or other transportation company, to conductors, brakemen, engine drivers, and other employees.

It then undertook also to extend the lien to all persons furnishing railroad iron, fuel, and all other supplies necessary for the operation of trains and engines, employed in the service of any such company. A memorandum stating the amount and justice of the claim verified by affidavit, according to the best knowledge and belief of the affiant, was required to be filed within six months after his wages or salary shall have fallen due.

And the lien given was "to the extent of the wages or salaries."

It is evident that the lien for "supplies" was attempted to be grafted upon this act after the bill had been drawn, for nothing is said in the title of the act concerning supplies, and the second section of the act relates wholly to wages or salaries.

II. ACTS 1878-1879, C. 82, P. 52.

This act bore the same title and appears on its face to have been drawn in order to correct the defects in the body of the original act concerning the lien for supplies. The word "supplies" is added to the second section and the lien is given to the extent of moneys due for such "wages or supplies."

The words "engines and cars" are specifically mentioned among supplies, and the benefit of the

lien is also extended to any mining or manufacturing company."

April 11, 1899, both the above acts were declared unconstitutional for defect of title in the suit of *Fidelity Insurance & Deposit Co. v. Shenandoah Valley R. R. Co.* (86 Va., 1).

III. CODE 1887, SECS. 2485-2486.

These sections of the code embody the provisions of acts 1878-1879, c. 82, p. 352, with some change of phraseology and the addition of a proviso to the first section.

1893. The law as set forth in these sections of the code was declared constitutional and applicable to corporations chartered prior to May 1, 1888, when the code went into operation, as well as to those subsequently chartered. It was further held that the lien given was superior to mortgages and deeds of trust executed at any time subsequent to March 21, 1877, and that the liens under the statute have priority among themselves in the order of recordation. (*Va. Dev. Co. v. Crozer Iron Co.*, 90 Va., 126.)

It was also decided in this case that "pig iron" furnished a rolling mill was "a supply necessary to the operation of the same." (90 Va., 126.)

IV. ACTS 1891-1892, C. 224, P. 362.

This act amended sections 2485-2486 of the Code of 1887.

The amendments to section 2486 were designed to cover mining and manufacturing companies more fully, making

LABOR LIEN.

First. Wages and supplies necessary to the operation of any transportation company and the services or labor of all clerks, mechanics, and laborers furnished to any mining or manufacturing company, a prior lien on the franchise, gross earnings, and all the real and personal property of said company which was used in operating the same.

SUPPLY LIEN.

Second. And giving to all persons furnishing supplies to a mining or manufacturing company necessary to the operation of the same:

I. A prior lien upon the personal property of such company other than that forming a part of its plant.

II. Also a lien upon all the estate, real and personal, of said company; this lien, however, to be subject and inferior to:

(a) Any lien of deed of trust, mortgage, hypothecation, sale, or conveyance made or executed and duly admitted to record prior to the day at which said supplies were furnished.

(b) Also inferior to the labor lien given clerks, mechanics, and laborers for services furnished by them as aforesaid.

The amendment to section 2486 required the memorandum to be filed "within ninety days after such supplies are furnished or services rendered."

V. ACTS 1895-1896, C. —, P. 340.

This act amended section 2486 of the Code of 1887 by requiring the memorandum to be filed "within

ninety days after the last item of the bill becomes due and payable for which such supplies are furnished or service rendered."

The law as set forth in the acts of 1891-1892, c. 224, p. 362, and acts 1895-1896, c. —, p. 340, covers this case.

SECOND. ARE THESE ACTS CONSTITUTIONAL?

It is argued by Mr. A. W. Patterson, in a written note filed before Commissioner Daniels, that said acts are unconstitutional, and in support of this contention he quotes *Railway Co. v. Ellis* (165 U. S., 195), and a number of other foreign cases.

But it seems to the commissioner that the constitutionality of the present acts is no longer an open question in Virginia. That point was fought out in the *Crozer case* (90 Va., 126), and settled affirmatively by our Supreme Court of Appeals, so far as sections 2485-2486 of the Code of 1887 were concerned. The provisions of those sections of the Code were as drastic as those of the present acts. Indeed the "supply lien" as originally given by section 2485 was more extensive than at present. The chief purpose of the amendments of acts 1891-1892 seems to have been to subordinate the "supply lien" to the "labor lien," to limit it to the personal property other than that forming a part of the plant, and to make it expressly subject and inferior to any lien by deed of trust, mortgage, hypothecation, sale, or conveyance, made or executed and duly admitted to record prior to the date at which the supplies are furnished. The commissioner can not discover that anything has been

added to the act since the Code of 1887 to make it more objectionable as "class legislation." It may be noted that the decision of the *Crozer case* (90 Va., 126), upon the constitutional question has been quoted with approval by our court in *Milhiser Mfg. Co. v. Gallego Mills Co.* (101 Va., 579-598). See also *Fidelity Co. v. Roanoke Iron Co.* (81 Fed. Rep., 439), and *In re West Norfolk Lumber Co.* (7 Va. L. R., 836).

THIRD. HOW SHALL THE ACT BE CONSTRUED?

The courts have recognized the difficulty of construing the labor and supply lien acts in Virginia. They present problems which even the closest study may not certainly solve. But the following rule has been laid down in Virginia: "The statute, moreover," says Judge Lewis, "is a remedial one, and therefore to be construed liberally, as has been held in regard to statutes giving liens to mechanics and laborers." (*Va. Der. Co. v. Crozer Iron Co.*, 90 Va., 126-135, citing *Davis v. Alvord*, 94 U. S., 545; *Flagstaff Silver Mining Co. v. Cullings*, 104 U. S., 176).

The original intention of the act of 1876-1877 was to secure the payment of wages or salaries of conductors, brakemen, engine drivers, and other employees of transportation companies. The primary object was to protect the humble laborers of such corporations by giving them a first lien on the franchise, the gross earnings, and all the real and personal property used in operating the same. Such employees gave all they had to such companies in their labor, and even risked their lives in rendering such

service. They neither had the time nor the opportunity nor the ability to study or understand the financial condition of the corporations by which they were employed. The legislature saw that in many cases such corporations were either improvidently or ruthlessly wrecked, leaving the dependent laborer to whistle for his pay; or that mortgages were given upon the franchise and all the properties of the corporation which were held to be superior to the claim for wages. The helpless were in need of help, and the remedy was afforded by this statute.

Then the idea was suggested that certain persons furnishing necessary supplies should also be protected, and these meritorious claims were included in the statute.

The next step was to bring persons furnishing labor and supplies to mining and manufacturing companies under shelter of the law, and then the idea was advanced that industrial enterprises in Virginia would be encouraged by such legislation.

It seemed to the legislature that the credit of such companies would be extended by giving liens for labor and supplies, and the secondary intention of the acts has been in this way to promote the operation of transportation and manufacturing companies. These considerations should always be borne in mind in interpreting the provisions of the statutes; and under the rule laid down in the Crozer case we should be guided by the spirit of the act through difficult passages, placing a liberal interpretation upon its provisions.

FOURTH. WAS THE TRIGG COMPANY A MANUFACTURING COMPANY?

The statute gives the lien for labor furnished "to any mining or manufacturing company" and the supply lien for supplies furnished to "a mining or manufacturing company." There is no other limitation or specification as to the character of the company in this statute.

The charter of the William R. Trigg Company provides that it shall have power "to construct, maintain, and operate machine shops, docks, and shipyards, to construct boats, ships, railroad and marine equipment, and machinery of every description, and all other appliances needed therefor."

The company is also given power to acquire and operate "the works, property, franchise, stock and bonds, rights, privileges, and immunities, of any individual, firm, or corporation, operating or owning a machine shop, docks or shipyard, or manufacturing railroad or marine equipment, or machinery of any description."

We find in Webster's Unabridged Dictionary the following definitions:

Manufacture, v. (1) To make (wares or other products) by hand, by machinery, or by other agency. (2) To work (as raw or partly wrought materials) into suitable forms for use.

We find the following definition in the Standard Dictionary:

Manufacture, v. (1) To make or fashion by working on or combining material; to form

or produce by some industrial process; fashion by hand or machinery; especially when done in considerable quantities and regular business. (2) To work or fashion by labor into useful or desirable forms.

The following definitions are given in the Century Dictionary:

Manufacture, v. To make or fabricate any thing for use, especially in considerable quantities or numbers, or by the aid of many hands, or by machinery; work materials into the form of.

Manufacturing, p. a. Pertaining to or concerned in manufacture; industrial, as a manufacturing community.

Manufacture, n. The operation of working goods or wares of any kind; the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand labor or by machinery; used more especially of production in a large way by machinery or by many hands working cooperatively. (2) Anything made for use from raw or prepared material.

The Trigg Company was a large plant, composed of various departments and shops, in which many kinds of machinery were used. There was a machine shop, in which machinery and tools of different sorts were made and fitted for use; a punch shop, in which plates were sheared and punched for riveting; a pattern shop, in which all sorts of patterns were made from wood; a blacksmith shop, con-

taining large steam hammers, and also a number of smiths' forges, for the forging of billets and the performance of all sorts of smith work; a furnace shop, for the bending and shaping of frames and plates; a carpenter shop, in which many kinds of woodwork was done; a joiner shop, equipped with special machinery in which furniture was manufactured and the finer woodwork done; a paint shop, in which paints were mixed; a copper shop, in which sheet copper was manufactured into pipe; steam connections, ventilators, brass and copper castings, and other forms, and where galvanizing was also done; a boiler shop for the manufacture of boilers; a foundry in which iron and brass castings were made out of raw materials. Large quantities of raw material of all sorts were purchased by the company and converted into finished products. No one would question the fact that Messrs. Talbott & Sons did a manufacturing business in this city. Their works were purchased by the Virginia Machine Company, and leased by that company to the Trigg Company to constitute a portion of the shipbuilding plant. A ship has been defined as "a locomotive machine adapted to transportation over rivers, seas, and oceans." (Benedict on Admiralty, sec. 215; *Pollock v. Cleveland Shipbuilding Co.*, 56 Ohio St., 655; Am. & Eng. Enc. of Law (new edition), p. 851.)

A ship is personal property, a chattel—not attached to the freehold—similar to other chattels, and subject to all the ordinary laws of personalty

until launched. It does not become a creature of the sea until christened and successfully launched into its element. Then for the first time the laws of admiralty attach, and she becomes in some sort a thing of life, with personal responsibility.

The Trigg Company not only manufactured ships of all sorts and sizes, and all necessary fittings and furniture therefor, but it also did a considerable amount of original and repair work for other manufacturing concerns. The commissioner has no doubt that the Trigg Company was "a manufacturing company" within the purview of the statute under discussion, and he therefore so reports.

FIFTH. WHAT SUPPLIES WERE "NECESSARY TO THE OPERATION" OF THE COMPANY?

A lien is given by section 2475 of the code and the acts amendatory thereof for work done and materials furnished by artisans, mechanics, lumber dealers, and others for the construction, repair, or improvement of any building or structure permanently annexed to the freehold.

Section 2485 of the code, and acts amendatory thereof, provides, "that if any person entitled to a lien, as well under section 2475 as under this section, shall perfect his lien given by either section, he shall not be entitled to the benefit of the other."

This indicated that the labor and supply lien was intended by the legislature to apply without distinction to any service or supply rendered a manufacturing company, provided only that it be "necessary to the operation of the same."

But if one be entitled to either lien—that given by section 2475 or that given by section 2485—he must make his election between them. If one entitled to a mechanic's lien may also for the same cause secure a labor lien or supply lien, then it makes no difference whether the labor or supplies be furnished for repairs or betterments to the plant or for the ordinary operation thereof. This is the logical conclusion to be reached from that portion of section 2485 just quoted. A repair to the plant may be absolutely “necessary to the operation of the company,” and so may a betterment or enlargement of the plant.

It has been held that “pig iron” is a supply necessary to the operation of a rolling mill. (*Va. Dev. Co. v. Crozer Iron Co.*, 90 Va., 126.)

It has been held that apparatus for a drying kiln did not constitute supplies necessary to the operation of a company organized for the manufacture and sale of lumber. The drying or seasoning of lumber was held to be a distinct business from that of its manufacture. (*Boston Blower Co. v. Carman Lumber Co.*, 94 Va., 94-99.)

It has been held that freight charges and goods for a commissary store were not supplies necessary to the operation of an iron company. (*Fidelity Co. v. Roanoke Iron Co.*, 81 Fed. Rep., 440, and 3 Va. L. R., 375.) The statute says that “all persons furnishing supplies to a mining or manufacturing company necessary to the operation of the same shall have a prior lien.” There is no limitation upon the nature of the supplies other than that they must be “necessary to the operation” of the company.

**SIXTH. HOW MUST IT BE SHOWN THAT THE SUPPLIES
WERE NECESSARY?**

The original act of 1876-1877 provided for a memorandum stating the amount and justice of the claim, verified by affidavit, according to the best knowledge and belief of affiant, to be filed within six months after his wages or salary shall have fallen due. There was no provision in this act for further proof, by suit or otherwise, nor was there any such provision in the acts of 1878-1879. Until the acts 1895-1896, p. 340, the statute plainly required the memorandum to be filed "within ninety days after supplies were furnished or service rendered." It was so held in the suit of *Overholt v. Old Dominion Co.* (98 Va., 658). Judge Goff, of the United States Circuit Court, had gone so far as to say that the lien itself would fail unless the memorandum filed showed on its face that the supplies had been furnished or service rendered within ninety days before record (*Liberty P. Bldg. and Loan Co. v. Furbush*, 3 Va. L. R., 86). But this decision was criticised by Mr. R. G. H. Kean in the Law Register, and our Supreme Court of Appeals subsequently adopted the views held by Mr. Kean and overruled the decision of Judge Goff in *Overholt v. Old Dominion Co.* (98 Va., 654).

The original act of 1876-1877 declared and established the lien, and then provided that it should be "forfeited" unless the memorandum was duly filed.

The act of 1887 declared that no person should be entitled to the lien unless a memorandum should be

duly filed, and then for the first time this addition was made to the statute: "Any such lien may be enforced in a court of equity." (Code of 1887, section 2486.)

The commissioner is of opinion that the mere filing of a memorandum, verified by affidavit, is not proof of the claim, and that something more is necessary for the enforcement of the lien.

In the Boston Blower Company case the court held: "In this case the right is asserted under sections 2485-2486, and if it exists, it must be made to appear that the apparatus furnished is one of the "supplies necessary" to the operation of a company organized for the manufacture and sale of lumber (*Boston Blower Co. v. Carman Lumber Co.*, 94 Va., pp. 94, 99).

In a later case the court said: "We can not hold as a matter of law that the items claimed could not have been brought by proof within the statute under which the lien is asserted. As we have seen, the lien was presented in the Circuit Court, was accepted by the commissioner, duly reported, and the report was confirmed without objection being taken. While it is true in such cases that objection may be first made in this court for errors apparent on the face of the report, it can not avail, for the objection could have been made and cured by the introduction of evidence." (*Osborne v. Big Stone Gap Colliery Co.*, 96 Va., 58, 66.)

The commissioner is of opinion that the words of the statute, "Any such lien may be enforced in a court of equity," mean that the lien must be so

enforced; and that it can not be enforced without proof. He is further of opinion that the burden of proof is upon the claimant to show that his claim falls within the terms of the act, and that he has complied with its requirements.

SEVENTH. WHEN MUST THE MEMORANDUM BE FILED.

The original act required the memorandum to be filed by the claimant "within six months after his wages or salary shall have fallen due."

In the act of 1887 there was some change of phraseology, and the requirement was that the claimant should file his memorandum "within six months after his claim has fallen due." (Code 1887, section 2486.)

Acts 1891-1892, c.—, p. 363, again made some change of phraseology, and required the claimant to file the memorandum "within ninety days after such supplies are furnished or service rendered."

Acts 1895-1896, c. —, p. 340, by which this case is controlled, again amends the section under consideration, and required the claimant to file the memorandum of his claim "within ninety days after the last item of his bill became due and payable for which such supplies are furnished or services rendered."

The question arises: How does this limitation act upon open accounts, upon running accounts, upon stated accounts, and upon accounts for which, or for portions of which, a note or notes may have been given and *received*?

It is to be observed that the present statute says the claimant must file his memorandum "within ninety days after the last item of his bill becomes due and payable for which such supplies are furnished, or service rendered," in lieu of the former requirement that the memorandum should be filed "within ninety days after such supplies are furnished, or service rendered."

The change in the statute distinctly negatives the idea that a lien can only be obtained for such supplies or service that may have been furnished within ninety days before the memorandum is filed.

"Within ninety days after the last item of his bill becomes due and payable." What bill? Reading the amendment in the light of previous legislation, and bearing in mind the general purpose of the act, the commissioner is of opinion that the legislature meant the final bill for which a lien is claimed, intending to give the claimant a lien for the whole amount due him at the time the memorandum is filed. This conclusion seems to follow naturally from the expression "after the last item of his bill becomes due and payable"—"last item," indicating finality, while the term "bill" * * * for "which such supplies are furnished or service rendered" comprehends an extended account.

The precise points involved are:

1. Will the last item of a bill be sufficient to bring any extended account within the statute, provided only that said last item be for necessary supplies fur-

nished or service rendered within ninety days before the memorandum is filed?

2. Can the time within which the memorandum must be filed be extended by special credit upon the last item, by note, or otherwise?

Upon the first point attention is now called to the following decisions:

(a) Under federal decisions the labor lien given by sections 2485-2486 of the Code of Virginia is good if not barred at the date when a creditor's bill is filed, since the filing of such a bill stops the running of the limitation of section 2486, under such decisions. (*Newgass v. The Atlantic and R. R. R. Co.*, 72 Fed. Rep., 712-716.)

(b) Under *Fidelity Co. v. Roanoke Iron Co.* (81 Fed. Rep., 440), it was held:

"In this case the supplies were furnished under one contract, the deliveries being from day to day. The items are so connected as to form one transaction. It was a running account, and the limitation of ninety days must commence at the date of the last delivery of ore." (*Central Trust Co. v. Chicago, K. & T. Ry. Co.*, 54 Fed. Rep., 598; *Chitty Contracts*, 911; *Addison Contracts*, 1205 * * *.) The court holds, in case of a contract for labor to be performed at so much per day, the statute means by the terms "for service rendered" the date when the contract is completed or terminated, and that it does not require, in case of a running contract of this kind, where the work is done from day to day, that the claim shall be severed and only so much thereof

allowed as a lien as falls within the period of ninety days prior to the recordation of the claim." (*Fidelity Co. v. Roanoke Iron Co.*, 81 Fed. Rep., 450-453.)

(c) *Osborne v. Big Stone Gap Colliery Co.* (96 Va., 56): "It is true that a number of items were furnished more than ninety days before the account was filed in the clerk's office of Wise County, but it was a running account, and, where nothing to the contrary appears, is to be considered as falling due at the date of its last item (citing *Richards Co. v. Hildebeitel*, 92 Va., 91)."

It is to be regretted that none of these authorities show what sort of account will carry the lien back from the last item to cover the whole of any bill for supplies furnished or service rendered. They say that this will be done in the case of "a running contract" or "a running account," but they do not tell us how to determine whether a contract or account is "running," nor do they declare that the principle must be restricted to "running" accounts; and it must be observed that the statute does not use the word "account" at all, but makes the lien cover the "bill" of the claimant, for supplies furnished or service rendered. Now, one may make out a bill to cover several accounts made under different contracts, for different purposes, and upon different terms.

Reading the statute in the light of its development through successive amendments, it seems evident that the legislature intended the words "after the

last item of his bill becomes due and payable" to be broad enough to cover whatever might be due the claimant. But confining ourselves for the present to the decisions quoted, it may be inquired:

Through what length of time may a "running account" extend?

What diverse character of items may it contain?

What intervals may there be between the several items?

How many items must it contain?

Will one or two suffice?

Bouvier defines a "running account" as an "open account," referring to 2 Parson's Contract, 351 (2 Bouvier's Law Dictionary, 490).

The following definitions are given in American and English Encyclopedia of Law:

Open account: An open account is an account not stated nor agreed upon between the parties. Thus, an account is open when some term of the contract is not settled by the parties whether the contract consists of one item or many.

An account is also open whenever there have been current dealings between the parties which are kept unclosed with the expectation of further transactions between them.

Current accounts: A current account is an account not stated; a running account.

Account stated: An account stated is an agreement between parties who have had previous transactions of a monetary character that all the items of the account representing such transactions are true, and that the bal-

ance struck is correct, together with a compromise, express or implied, for the payment of such balance. (1 Amer. and Eng. Enc. of Law, new, 435-437.)

When an account constitutes one transaction in fact, it is immaterial that it is stated with one or many balances. (*Lamb v. Hanneman*, 40 Iowa, 41; *Pickett v. Merchants National Bank*, 32 Ark., 346; 1 Amer. and Eng. Enc. of Law, new, 435-436.)

As to accounts stated, see also *Robertson v. Wright* (17 Grattan, 534); *Camp v. Wilson* (97 Va., 275); *Mogarity v. Shipman* (93 Va., 64).

To sum up this matter, the commissioner is of opinion that the legislature did not intend to draw any fine distinctions as to the character of the account for which a claim might be filed, but that the true intent of the act was to give a lien in favor of any claimant for labor or supplies not barred by the general statute of limitations who might file his memorandum "within ninety days after the last item of the bill becomes due and payable for which such supplies are furnished or service rendered."

Upon the second point, attention is called to the following authorities:

In the Osborne case a lien was claimed for supplies furnished the colliery company, as shown by an account beginning November 23, 1902, and ending February 14, 1903, amounting to \$1,633, reduced by payments to \$1,438.72, for which latter sum, on March 18, 1903, a lien was claimed by record on March 18, 1903. The court said: "It is true that a number of items

were furnished more than ninety days before the account was filed in the clerk's office of Wise County, but it was a running account and, where nothing to the contrary appears, is to be considered as falling due at the date of the last item." (*Osborne v. Big Stone Gap Colliery Co.*, 96 Va., 58, 66.)

In the Furbush case Judge Goff said:

The statute does not contemplate that a company may give its note, due sixty days or one or two years after date, for the amount due its laborer, and that when such note is due that ninety days shall be allowed thereafter in which to file a memorandum claiming a lien for said amount, but it means that such a claim for a lien shall be made within ninety days from the time labor was performed—from the date the laborer was entitled to demand his wages. (*Liberty P. B. and L. Co. v. Furbush*, 3 Va. L. R., 86; see also *Fidelity Co. v. Hildebeital*, 92 Va., 91; *Osborne v. Big Stone Gap Colliery Co.*, 96 Va., 98.)

In the absence of special agreement, the giving and acceptance of a negotiable note does not amount to the payment of a preexisting debt. The authorities for this proposition are too numerous to be quoted now, but many of them may be found in 22 American and English Encyclopedia of Law (new edition), pp. 555, 556. At a very early day in Virginia it was held that a note was no satisfaction of a debt unless paid (*McGuire v. Gadsby* (1802), 3 Call., 234). It has also been distinctly declared in Virginia that a note is no payment unless so intended by the parties (*Morriss v. Harvey & Williams* (1881), 75 Va., 726).

It has even been held that checks do not amount to payment until paid. (*Larue v. Cloud* (1872), 22 Gralt., 425; *Blair & Hoge v. Wilson* (1877), 28 Gralt., 165; *Finney v. Edwards* (1880), 75 Va., 44.)

It has furthermore been held that novation is a matter of intention. (*Fidelity Co. v. Engleby* (1901), 99 Va., 168; *State Bank v. Domestic Co.* (1901), 99 Va., 411.)

The burden of proof that a note was accepted as payment is upon the party alleging it; and even the receipt of a creditor given upon acceptance of a bill or draft is not conclusive in case the same be not paid (22 Amer. and Eng. Enc. of Law (new edition), 5554, 5563, 5564.)

The prima facie presumption of satisfaction is stronger where a mortgage, collateral security, or a note of a third person is taken; but none of these things is conclusive.

The mere taking of a note to the owner, contractor, or some person who is liable for the debt, for the amount due, does not defeat a mechanic's lien nor amount to a waiver thereof, in the absence of a showing that the taking of such note was intended as a waiver, or that it was taken as a payment of the account. (20 Amer. and Eng. Enc. of Law (new), 498.)

In view of these authorities and of the language of the statute under discussion, the commissioner is of opinion that the legislature did not intend the lien given for labor or supplies to be extended by *special*

credit upon the last item of a bill, nor by the acceptance of a note for the amount of the bill, or any part thereof.

EIGHTH. WHAT IS THE PRIOR LIEN GIVEN FOR SUPPLIES?

The statute says: "All persons furnishing supplies to a mining or manufacturing company necessary to the operation of the same shall have a prior lien upon the personal property of such company, other than that forming part of its plant, to the extent of the money due them for such supplies." (Acts 1891-1892, c. —, p. 372.)

This divides the personal property of a mining or manufacturing company into two classes—

First. That forming part of its plant.

Second. That not forming part of its plant.

We are thus brought face to face with the question, What constitutes the plant of a manufacturing company?

The word "plant" used in this connection is of comparatively recent date. Bearing in mind the original significance of the term, we have the concept of a living vegetable organism, generally rooted in the ground and rearing its body, leaves, and branches toward the light. It is a comprehensive term, including all the parts and functions necessary to vegetable life and growth. If transferred to the domain of the law, it thus carries the legal mind into the realm both of realty and personalty, and if transferred to the commercial world the word seems

to lose nothing of its broad significance. It is defined by Webster as follows:

Plant. The whole machinery and apparatus employed in carrying on a trade or mechanical business; also sometimes including real estate, and whatever represents investment of capital in the means of carrying on a business, but not including material worked or finished products; as the plant of a foundry, a mill, or a railroad.

In the Standard Dictionary we find the following definition:

Plant. A set of machines, tools, etc., necessary to conducting a mechanical business; often including the buildings and grounds, or, in case of a railroad, the rolling stock, but not including material or product; hence the permanent appliances needed for any institution, as a post-office, etc.

In the Century Dictionary we have the following definition:

Plant. The fixtures, machinery, tools, apparatus, appliances, etc., necessary to carrying on any trade or mechanical business, or any mechanical operation or process.

These definitions show how unsettled is the meaning of the term.

That given by Webster would seem to be the most satisfactory; but the Century is quoted by the American and English Encyclopedia of Law, and has also been approved in *So. Bell Tel. Co. v. D'Alemberte* (39 Fla., 87). There has never been any legal defi-

nition of the term in Virginia, and only three or four cases are cited in the Encyclopedia of Law.

But it is to be observed that the language of the statute is: "The personal property of such company other than that forming part of its plant," and the word "plant" is to be construed in this connection. We are to determine what it means here, and not what it might mean generally or in any other connection. The whole expression must be read together, in connection with the other provisions and general purpose of the act. And when so read two views present themselves to the mind.

1. It is possible to construe the words "the personal property of such company other than that forming part of its plant" as equivalent to the term "fixtures."

2. It is possible to construe them as if used in their ordinary significance, without reference to the legal doctrine of "fixtures."

In support of the first view it may be said that the intention of the legislature was to protect persons furnishing supplies, as well as to extend the credit of a manufacturing company for the purchase of necessary supplies, and that therefore the legislature intended to broaden rather than to restrict the prior lien for such supplies. As the statute gives this prior lien upon all the personal property of such company "other than that forming part of its plant," it is evident the lien will be broadened by confining "personal property forming part of the plant" to fixtures. One might also be led to this conviction by

the difficulty of otherwise determining what the legislature meant by reason of the fact that the term "plant" has never been legally defined.

In behalf of the second view, it may be said: That the legislature should be presumed to have used the phrase under discussion in its ordinary significance, with reference to its use in the business world, and to the interpretation that would ordinarily be placed upon it by business men; that the legislature intended rather to restrict than to broaden the prior lien for supplies, because in addition to such prior lien the statute also gives a secondary lien for supplies upon all the estate, real and personal, of a manufacturing company. In support of this view, it may be further said that in reviewing the course of legislation it is apparent that the high tide in favor of supply liens culminated in the code of 1887. Since then a sentiment is discovered in the acts to pay more regard to the rights of mortgagees and similar claimants, the changes in the acts of 1891-1892 and later acts being in the line of restricting and subordinating the lien for supplies.

The ascertainment of the intentions of the legislature upon this subject is one of the most difficult problems the commissioner has had to solve, and as he has been wholly without the aid of argument and discussion of counsel, he thinks it best to submit his views to the court in alternative form.

If the first view is adopted, the prior lien for supplies will cover all personal property of the plant except fixtures.

If the second view be adopted, the prior lien for supplies will cover only such personal property as may be construed not to form a part of the plant; and in this case we should be guided by the books and records and testimony of the officers of the Trigg Company in defining its plant. (See deposition, pp. 439-443.)

The Virginia doctrine on the subject of fixtures is set forth in the following cases:

Green v. Phillips (26 Gratt. (1875), 752): This was a contest between mortgage and execution creditors of a lumber manufacturing and merchandise company. It is the leading case in Virginia on this subject and the able opinion of Judge Joseph Christian has been frequently quoted by his successors with approval. It was held by the court that certain machinery of the company passed with the building in which it was situated as realty and was not subject to execution.

"The true rule deduced from all the authorities," says Judge Christian, "seems to be this: That where the machinery is permanent in its character and essential to the purpose for which the building is occupied, it must be regarded as real estate and passed with the building, and that whatever is essential to the purpose for which the building is used will be considered as a fixture, although the connection between them is such that it may be severed without physical or lasting injury to either."

Shelton v. Ficklen (32 Grat., 727). This was a contest between an individual mortgagee and the

trustee for the social creditors of a firm of lumber merchants and spoke manufacturers. The court held that the machinery passed with the buildings as real estate, and that the claim of the social creditors was inferior to that of the prior mortgagee.

Morotock Ins. Co. v. Rodefer (92 Va., 747, 752). In this case the court held that the machinery in a glass factory was "fixtures," passing as real estate, and that a mortgage thereon was not a "chattel" mortgage.

Hoskins Wood Vulcanizing Co. v. Cleveland Ship-building Co. (94 Va., 439, 447). The court held in this case that the machinery of the vulcanizing company constituted a portion of the real estate.

In this and all the Virginia cases the machinery was heavy and annexed to the freehold.

The encyclopedia says:

The cases suggest the idea that when a building is arranged for, or permanently devoted to, a particular purpose anything annexed to the building for the carrying out of that purpose may be considered as accessory to the realty itself, while articles annexed merely for the purpose for which the building happens at the time to be used are not to be regarded. (13 Amer. & Eng. Enc. (new), 613.)

NINTH. HOW MUST SUPPLY LIENS RANK AMONG THEMSELVES?

It has been decided that liens under the original sections 2485 and 2486 of the Code of 1887 have priority among themselves in the order of recordation. (*Va. Dev. Co. v. Crozer Iron Co.*, 90 Va., 126.)

Subsequent acts have made changes in the statute, but the commissioner is of opinion that the principle laid down in the Crozer case should still control. If this principle were departed from in the present case it would be almost impracticable to make up an account of liens. The statute gives any creditor the right to file a memorandum of his claim at any time within ninety days after any supply is furnished or service rendered. If he postpones action under the statute he does so at his own risk and he should be content to take the lien to which he may be entitled when he records his memorandum. It would be unfair to other claimants to allow one to extend his credit indefinitely without their knowledge and yet to obtain at the eleventh hour the same lien he would have had if he had filed his memorandum at the time the supplies were furnished or service rendered. This would be putting a premium upon procrastination, would take away all virtue from diligence, would be contrary to the spirit and intent of the recording statutes, and would give rise to "pocket liens" of the most objectionable character. It is enough that the lien when acquired should cover the whole claim as of the date of record.

The commissioner is of the opinion that the questions arising in this case should be decided upon the general principles above declared.

And now from the papers in this case and all the evidence before him, in response to the inquiries of the decree entered hereon on the 30th of January, 1905, he reports:

FIRST.

The first inquiry calls for a statement of the real estate owned by the William R. Trigg Company, together with all the riparian and other rights appurtenant thereto; and also the personal property forming a part of the plant of the William R. Trigg Company.

The commissioner does not understand that this inquiry calls for a specification of all the "fixtures" of the company. The inventory filed by the receiver is of enormous bulk, and it would be impossible for the commissioner to specify every article in the limited time allowed for this report.

I. Real estate, riparian, and other rights appurtenant thereto.

A. Certain piers, wharves, docks, buildings and fixtures therein, and other improvements thereon erected, together with all and singular the ways, streets, alleys, passages, waters, water courses, roads, and appurtenances thereto, included in all that certain real estate in this city conveyed to the William R. Trigg Company by four deeds, to wit:

(1) Deed from the city of Richmond, dated June 1, 1901, and recorded in D. B. 171 A, p. 265.

(2) Deed from the Chesapeake and Ohio Railway Company, dated June 1, 1901, and recorded in D. B. 171 A, p. 245.

(3) Deed from the Chesapeake and Ohio Railway Company, dated June 1, 1901, recorded in D. B. 171 A, p. 258.

(4) Grant from the Commonwealth of Virginia, dated November 21, 1901, recorded in D. B. 172 C, p. 290.

Said real estate is more fully described as: "All that certain lot or piece of ground, with the buildings and improvements thereon erected, composing the shipyard, shipbuilding plant, boundaries, shops, railways, manufactories, offices, piers, wharves, docks, and dry docks of the William R. Trigg Company, situate in the city of Richmond, county of Henrico, and State of Virginia, more particularly described as follows:

"Beginning at the point 'M' on the boundary line between S. H. Hawes and the Chesapeake and Ohio Railway Company, which said point is on a line extended southeasterly parallel to and eleven (11) feet, more or less, easterly from the face of the stone wall just above the present ship locks and on the easterly side of said dock, which said point 'M' is also in the extension northeasterly of the line of the southeasterly faces of the wing walls and the lower end of the said locks; thence from the said point northwesterly along the said line parallel to the said wall to a point opposite an angle in the said wall about four hundred and twenty-five (425) feet above the said ship locks; thence northeasterly and parallel to and eleven (11) feet, more or less, easterly from the face of the wall of the said dock to a point on the easterly margin of the lower dock slip; thence northeasterly along the said easterly margin to a point twenty (20) feet southerly from and at right angles to

the center of the line of the double-track viaduct of the Chesapeake and Ohio Railway Company; thence northwesterly on a line twenty (20) feet southerly from and parallel to the said center slip; thence southwesterly along the said westerly margin to the corner of the dock wall; thence northwesterly along the face of the dock wall to the point where the pile bulkhead commences between Twentieth and Nineteenth streets; thence northwesterly along the line of said bulkhead to the easterly side of Seventeenth street; thence northwesterly across Seventeenth street to the corner of the stone walls of the said dock; thence northwesterly crossing Shockoe Creek and along the face of the stone wall of the said dock to a point east of Fourteenth street; thence northwesterly along the face of the stone wall of the said dock to an angle in the same just above and westerly from the warehouse of the Eagle Paper Company; thence northwesterly in a direct line to an angle in the stone wall opposite the Kanawha warehouse; thence northwesterly in a direct line along the face of the stone wall and across the water in the tail race of the Wortendyke Manufacturing Company to a point on the easterly line of Thirteenth street; thence northeasterly along the said easterly line of Thirteenth street to the northeasterly corner of the lot No. 3 conveyed to the James River and Kanawha Company (predecessor of the Chesapeake and Ohio Railway Company) by deed dated February 4, 1854, by the heirs of ——— Haxall, and recorded in Deed Book 66, page 447, in the Hustings

Court of the city of Richmond, Va.; thence in a direct line northwesterly to the northwesterly corner of the said lot No. 3 on the westerly side of Thirteenth street; thence southwesterly along the westerly side of Thirteenth street to the southwesterly corner of lot No. 2, also conveyed by the said deed dated February 4, 1854, and recorded as aforesaid; thence southeasterly seventy (70) feet to the southeasterly corner of the said lot No. 2; thence northeasterly eighteen (18) feet, more or less, to a point on the easterly side of the said lot No. 2; thence southeasterly along the southerly side of old towpath of the said James River and Kanawha Company partly on a direct and partly in a curved line to the upper or westerly corner of the stone wall on the southerly side of said dock and opposite the warehouse of the Eagle Paper Company; thence easterly along the face of the said stone wall to a corner in the same about on the easterly line of Fourteenth street; thence southwesterly along the face of the stone wall to a point where the last mentioned face is intersected by a line drawn parallel to and southerly from the straight part of the face of the dock wall between Shockoe Creek and Fourteenth street, which the last-named line also passes through, the northeasterly corner of the concrete foundation for the third pair of pedestals from the northerly side of the said dock and carrying the viaduct of the Seaboard Air Line Railway; thence southeasterly along the said last-named line parallel as aforesaid to the last-named dock wall to the said corner of the said concrete foundation; thence in a direct line southerly to

the northeasterly corner of the concrete foundation of pedestal No. 183 north of the viaduct of the Chesapeake and Ohio Railway Company; thence southerly from the last-named corner and parallel to a line through the centers of pedestals No. 183 north and south of the last-named viaduct to a point in the southerly extension of the line of the face of the dock wall on the south side of the side dock; thence southeasterly, crossing Shockoe Creek on a line coincident with the extensions of and along the face of the dock wall, from Shockoe Creek southeasterly to a point in the extension southerly of the easterly line of Eighteenth street from the city monument stone at the northeast corner of Cary and Eighteenth street; thence along the said extension of the easterly line of Eighteenth street to the point 'B,' which said point 'B' is in the center of the main line of the Southern Railway and is located S. 40° 50' W. (magnetic) 516.82 feet from the city monument stone, and is located S. 16° 24' E. (magnetic) 371.23 feet from the northeast corner of the brick warehouse on the south side of the said dock and on the west side of Seventeenth street; thence from point 'B' S. 40° 50' W. (magnetic) 25.15 feet to a point 'A,' which is also in the extension southerly of the easterly line of Eighteenth street from the city monument stone at the northeast corner of Cary and Eighteenth streets and distant 541.97 feet therefrom; thence S. 34° 21' W. along the easterly side of Eighteenth street as proposed to be laid out between the dock and James River to a point 'N,' which

point 'N' is on a line parallel to and (measured at right angles) 70 feet northeasterly from the harbor line approved by the United States Secretary of War, April 23, 1900; thence along said line S. $54^{\circ} 26'$ E. (true meridian) 70 feet from and parallel to said harbor line to a point 'O,' which point is opposite to and on a projection of the western line of Twentieth street; thence along said projection of said western line of Twentieth street S. $40^{\circ} 50'$ W. (magnetic) to a point 'P' on a line 20 feet (measured at right angles) northeasterly from and parallel to said harbor line; thence south $54^{\circ} 26'.05$ E. (true meridian) along said parallel to and twenty feet from said harbor line to a point 'Q,' which point is on the western line of the property recently condemned by the city of Richmond, belonging to the estate of A. D. Williams (deceased), and to W. C. Preston (deceased), which point 'Q' is also about 40 feet westerly from (measured parallel with the said harbor line P) the projection of the westerly line of Twenty-second street; thence at right angles with said harbor line 20 feet to the intersection 'R' with said harbor line; thence along said harbor line 2.192 feet, more or less, S. $54^{\circ} 26'.05$ E. (true meridian) to a point 'S' on said harbor line, which point is two hundred and fifty-seven (257) feet measured eastwardly on said harbor line from a point of said harbor line where the line of the southeasterly face (excluding the steps) of the southeasterly wing walls of the old ship locks when projected to the harbor line intersects said harbor line; thence

at right angles to said harbor lines W. $35^{\circ} 35' 55''$ E. (true meridian) twenty-one feet to a point 'L' on margin of the river slip at the end of the jetty below the old ship locks; thence in a direct line and in a northwesterly direction to the point 'K' on the extreme southeasterly face of the lower wing wall of the old ship locks, which point 'K' is also on a line parallel to and twenty-five feet (measured at right angles) westerly from the face of the westerly wall of said old ship locks; thence from the point 'K' northeasterly in a direct line to the point 'M,' being the point of beginning; together with all the riparian and other rights appurtenant to said land, including right of ingress to or egress from the said locks between the lower end thereof and the point of the jetty below the same, for a more particular description of which piece or parcel of land reference is hereby made to the map attached to and recorded with a certain deed of trust or mortgage from the said William R. Trigg Company to the Commercial Trust Company of Philadelphia, trustee, dated June 1, 1902, in the clerk's office of the Chancery Court of the city of Richmond, Va., in Plat Book No. 2, page 135.

"Together with all and singular the buildings, wharves, docks, dry docks, piers, slips, landing places, railways, marine railways, shops, furnaces, forges, factories, offices, storehouses, and other improvements thereon erected and fixtures thereto annexed or appertaining.

"And all and singular the ways, streets, alleys, passages, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto the said premises belonging or in anywise appertaining."

This property cost \$136,850.19. (Depositions, p. 447.)

The above real estate being subject to certain easements, rights, licenses, and privileges, set forth in two certain agreements, dated November 21, 1904, between the Southern Railway Company and the William R. Trigg Company. One of said agreements is recorded in the clerk's office of the Chancery Court of the city of Richmond in D. B. 183 B., page 315; and the other is likewise recorded in D. B. 183 B., page 320.

Copies of said agreements, together with the plats thereto attached, are filed with this report as a part thereof.

The buildings upon the said real estate are described as follows, the fixtures therein not being specially mentioned:

Office building, having 17,000 square feet of floor space, equipped with electric lights, heat, and furniture.

Office building having 7,000 square feet for the use of government and other inspectors.

Machine shop, with 30,000 square feet, fully equipped with the most modern labor-saving motor-driven tools and cranes.

Pattern shop, of 13,000 square feet, similarly equipped.

Foundry, of 10,000 square feet, with latest improved cupolas, brass furnaces, electric traveling cranes, and motor-driven blasts.

Smith shop, of 20,000 square feet, with four steam hammers, one of 6,000 pounds, boilers, furnaces, and forges.

Bending shed, of 5,000 square feet, with angle and plate furnaces.

Developing shed, of 20,000 square feet, with straightening rolls.

Mold loft, of 20,000 square feet, pronounced by many the finest in the United States.

Angle smith shops, of 5,000 square feet of floor space, with the usual equipment.

Punch shed, of 22,000 square feet, fully equipped with ship fitters' tools of the largest capacity.

Carpenter shop, of 13,125 square feet, and a joiner shop of the same size, all fully equipped with modern motor-driven tools.

These improvements cost \$512,852.93, exclusive of machinery. (Dep., p. 448.)

B. An unimproved lot at the southeast corner of Twentieth and Marshall streets, in this city, fronting 112 feet on Marshall street and running back between parallel lines 120 feet to a 12-foot alley. This is the unsold portion of the property conveyed to William R. Trigg Company by deed dated June 23, 1900, from John E. Palmer and others, recorded in D. B. 168 B, page 404.

This property is not included in the deeds of trust of June 1, 1901, and June 14, 1902, from William R. Trigg Company to Commercial Trust Company, of Philadelphia, and Richmond Trust and Safe Deposit Company, of Richmond, respectively.

II. Personal property forming a part of the plant.

A. If this expression be construed as equivalent to "fixtures," then the personal property forming part of the plant is described in class C of the inventory filed by the receiver in this cause, under subdivisions 1 and 4, containing a list of machinery attached, and derricks and cranes.

B. If this expression is to be construed according to its ordinary acceptation in the commercial or business world, the personal property forming part of the plant is described in Class C of the inventory filed by the receivers in this cause and will include all that contained in the five subdivisions of said class, the proceeds of the furniture and furnishings under the fifth subdivision to be equally divided, by agreement of counsel, between the bondholders and the supply-lien creditors.

SECOND.

The second inquiry calls for an account of liens, with their respective amounts, and the order of their priority.

The commissioner is of opinion that the liens should be satisfied in the following order:

I. Rent due Virginia Machine Company, amounting to \$610, with interest from September 20, 1902,

the average date (File Nos. 176-177). This claim has been transferred by a decree of court to the sum of \$1,000, deposited in the Union Bank of Richmond, arising from the proceeds of sale by the receiver of personal property on the premises of said Virginia Machine Company. (File Nos. 305-306.)

II. Labor liens, on the franchises, gross earnings, and all the real and personal property of the William R. Trigg Company which was used in operating the same.

III. Mechanics' liens, on the buildings or structures erected on the real estate of William R. Trigg Company.

IV. Supply liens, upon the personal property of the William R. Trigg Company other than that forming part of its plant.

V. First-mortgage securities, under deed of June 1, 1901, from William R. Trigg Company to Commercial Trust Company, trustee, of Philadelphia, Pa., securing the principal sum of \$1,000,000, represented by one thousand (1,000) bonds, each for \$1,000, dated June 1, 1901, and payable June 1, 1921, with semiannual interest at the rate of five per cent (5 per cent) per annum.

All the bonds authorized by this deed were sold, and are outstanding. Interest was paid up to the 1st of December, 1902, and is due from that date.

VI. Second-mortgage securities, under deed of June 14, 1902, from William R. Trigg Company to Richmond Trust and safe Deposit Company, trustee, of Richmond, Va., securing the principal sum of

\$1,000,000, represented by nine hundred (900) bonds for \$1,000 each and two hundred (200) bonds for \$500 each, dated June 14, 1902, payable June 14, 1912, with semiannual interest at the rate of six per cent (6 per cent) per annum.

All the bonds authorized by this deed were sold and are outstanding. No interest was ever paid on them, and is therefore due from their date.

VII. Supply liens upon all the estate, real and personal, of William R. Trigg Company, remaining after the satisfaction of the above liens.

LABOR LIENS.

The labor liens are set forth in *Statement No. 1*, hereto attached, giving their rank, designating the *deed book* in which they are recorded, giving the names of the lienors, and amounts of the several claims, and the date upon which each claim fell due.

MECHANICS' LIENS.

The mechanics' liens are set forth in *Statement No. 2*, hereto attached, designating the mechanics' lien book in which they are recorded, giving the names of the lienors, the several amounts claimed, the amounts proved, and the date upon which each claim fell due.

SUPPLY LIENS.

The supply liens are set forth in the following statements:

Statement No. 3a, being an alphabetical list of supply liens filed, with figures indicating their respec-

tive rank, and references to the order in which they stand under the statement No. 3b.

Statement No. 3b, being the proof of claims, giving the name of each claimant, the order of proof, the amount proved, the date of the claim, the name of counsel, and references to the depositions concerning the claim.

Statement No. 3c, being statement showing the rank of the supply liens, the record of same, the names of claimants, the amounts claimed, and the amounts proved.

This statement also indicates the cases in which there has either been no proof, or defective proof.

Statement No. 3d, being an alphabetical list of supply lien claimants who have been made formal parties to the suit.

Statement No. 3e, being an alphabetical list of supply lien claimants who have not been made formal parties to the suit, some of them having appeared before the commissioner with evidence of their claims, and others not having appeared, nor submitted any proof of their claims.

STATEMENT NO. 1.—*Labor liens.*

First National Bank of Richmond et al. v. William R. Trigg Company and others.

Rank.	D. B. 176 A.	Lienor.	Date of record.	Amount claimed.	Amount paid.
1	100	Cheatwood, J. C. (Sept. 1, 1902, to Dec. 23, 1902).	1902. Dec. 23, 6.45 p. m....	\$3,969.56	\$3,969.56
2	166	Tyler, John, & Co. (Nov. and Dec., 1902).	Dec. 23, 12.45 p. m....	223.50	223.50
3	169	Smith & Hall (Sept. 15, 1902, to Nov. 22, 1902).	Dec. 24, 1.55 p. m....	100.00	100.00
4	295	American Locomotive Co. (Oct. 22, 1902, to Nov. 26, 1902).	1903. Jan. 14, 5 p. m.....	21.00	21.00
5	480	Jos. Heppert, assignee (Sept. 5, 1902, to Dec. 5, 1902).	.....	1,806.98	1,806.98
6	444	Jos. Bryan, trustee (Jan. 3, 1903).	.....	20,038.75	20,038.75
7a	494	Bowles, A. R. (Nov. 25, 1902, to Dec. 23, 1902).	.....	9.00	.....
7b	495	Swineford, H., & Son (Nov. 23, 1902, to Dec. 23, 1902).	.....	25.92	.....
				26,194.71	26,194.71

REMARKS.

The statute gives the labor lien in favor "of all clerks, mechanics, and laborers who furnish their services or labor to any mining or manufacturing company."

It has been held that a telegraph company is a "laborer" within the protection of the statute. (*Newgrass v. A. and D. R. R. Co.*, 72 Fed. Rep., 712-716.)

J. C. Cheatwood testified that he furnished teams and men to the Trigg Company; that the names of his men appeared upon the pay roll of the company; that he exercised no control over them, but that they were worked under the direction of the Trigg Company.

The commissioner is of opinion that this is a case of services or labor furnished by a mechanic or laborer within the meaning of the statute "Qui facit per alium facit per se;" and it seems to the commissioner that Mr. Cheatwood ought to occupy as good a position as if he were the formal assignee of the claim of each laborer furnished by him.

But Mr. Cheatwood testified that he took two notes from the William R. Trigg Company, neither of which has been filed before the commissioner; and there are authorities to the effect that no such claim should be allowed until the notes are surrendered. (*Clement v. Newton*, 78 Ill., 427; *Van Stone v. Stilwell*, 142 U. S., 128, 136.)

John Tyler & Co.: This claim is for hauling done by him for William R. Trigg Company, and the commissioner holds it to be a labor lien upon the principle above stated.

Joseph Heppert, assignee H. D. Puryear: This claim is also placed among labor liens upon the principles above declared. (*Fidelity Co. v. Roanoke Iron Co.*, 81 Fed. Rep., 440, 453.)

Interest should be paid on the above claims from the last date given under the name of each claimant, respectively.

STATEMENT NO. 2.—*Mechanics' liens.**First National Bank of Richmond et al v. William R. Trigg and others.*

	M. L.	Lienor.	Date of record.	Amount claimed.	Amount proved.
5	257	Baldwin & Brown (Oct. 1, 1902, to Dec. 1, 1902).	Dec. 23, 1902, 6.46 p. m.	\$2,885.34	\$2,544.40
5	262	Talpaferro, J. L. (Nov. 15, 1902, to Dec. 20, 1902).	Dec. 24, 1902, 11.05 a. m.	169.09	118.94
5	263	Warner Moore & Co. (Aug. 4, 1902, to Nov. 12, 1902).	Dec. 24, 1902, 4.15 p. m.	404.87	.....
5	265	Chappell, J. H. (Oct. 13, 1902, to Dec. 1, 1902).	Dec. 20, 1902, 5 p. m...	672.74	662.32
				4,132.04	3,325.66

REMARKS.

There is no priority among these mechanics' liens under the statute, but they all rank alike. (Code 1887, sec. 2484.)

Warner Moore & Co.: The evidence shows that the amount due this company is \$373.33, instead of \$404.87. This claimant also filed a memorandum for supply lien, but he can not claim both under the statute. The evidence submitted by him is not sufficient to support the claim for a supply lien, because it does not show the furnishing of supplies "necessary to the operation" of the Trigg Company. The commissioner therefore has rejected the claim for supply lien and allowed that for mechanics' lien.

J. H. Chappell: This claimant filed a mechanics' lien for \$672.74, but the proof is that the true amount due him is \$662.32. (See depositions, p. 507.)

Interest should be paid on the above claims from the last date given under the name of each claimant respectively.

STATEMENT NO. 3.—*Supply liens.*

First National Bank of Richmond et al. v. William R. Trigg Company and others.

Rank.	D. B. 176 A.	Lienor.	Date of record.	Amount claimed.	Amount proved.
			1902.		
1a	1 (48)	Merchant & Co. (Aug. 4, 1902 to Dec. 16, 1902).	Dec. 23, 2 p. m.	\$12,536.26	\$12,536.26
1b	9 (49)	Fore River Ship and En- gine Co. (May 28, 1902, to Oct. 5, 1902).	Dec. 23, 2 p. m.	32,985.81	32,170.83
1c	16 (9)	Newport News Shipbuild- ing and Dry Dock Co. (Mar. 31, 1902, to Oct. 31, 1902).	Dec. 23, 2 p. m.	5,986.03	5,986.03
1d	19 (8)	Morris, Wheeler and Co. (Aug. 7, 1902, to Nov. 17, 1902).	Dec. 23, 2 p. m.	3,087.82	3,087.82
1e	24 (3)	Este, Charles (Oct. 3, 1901, to Dec. 11, 1902).	Dec. 23, 2 p. m.	9,447.92	8,222.83
1f	26 (7)	Hendricks Brothers (May 12, 1902, to Dec. 3, 1902).	Dec. 23, 2 p. m.	19,718.34	19,718.34
1g	28 (50)	Babcock and Wilcox Co. (to Oct. 24, 1902).	Dec. 23, 2 p. m.	24,240.00	24,000.00
1h	30 (103)	Seaboard Steel Casting Co. (Aug. 6, 1902, to Dec. 5, 1902).	Dec. 23, 2 p. m.	4,780.61	4,780.61
1i	34 (104)	Hoffman, R. C. & Co. (Central Iron and Steel Co.) (Mar. 20, 1902, to Oct. 18, 1902).	Dec. 23, 2 p. m.	9,610.38	9,439.17
1j	47 (121)	Coleman, Wortham, as- signee Reekler, H. B. (Oct. 22, 1902).	Dec. 23, 2 p. m.	4,000.00	4,000.00
1k	49 (25)	Hawes, S. H. and Co. (July 3, 1902, to Dec. 9, 1902).	Dec. 23, 2 p. m.	2,048.68	2,048.68
1l	57 (25)	Southern Railway Supp- ly Co. (Sept. 23, 1902, to Dec. 5, 1902).	Dec. 23, 2 p. m.	1,080.02	1,060.72
1m	58 (2)	Knight, C. C. & Co. (Aug. 6, 1902, to Dec. 4, 1902).	Dec. 23, 2 p. m.	5,165.56	5,165.56
2a	71 (60)	Phoenix Iron Co. (Aug. 14, 1902, to Oct. 27, 1902).	Dec. 23, 3.15 p. m.	3,697.18	3,697.18
2b	73 (59)	Libby Mfg. Co. (Dec. 1, 1902).	Dec. 23, 3.15 p. m.	1,338.10	1,287.35
3	74 (108)	Woodward & Son (Oct. 2, 1902, to Oct. 23, 1902).	Dec. 23, 3.17 p. m.	372.70	372.70
4	76 (86)	Linhart, C. M., & Co. (Oct. 21, 1902, to Dec. 23, 1902).	Dec. 23, 3.33 p. m.	1,074.65	760.65
5	79 (61)	Gunn, Edgar G. (Oct. 1, 1902, to Dec. 13, 1902).	Dec. 23, 4 p. m.	637.96	637.96
6	81 (85)	Frischkorn, H. B. (Aug. 20, 1902, to Nov. 9, 1902).	Dec. 23, 4.40 p. m.	115.70	115.70
7	83 (23)	Gordon Metal Company (Aug. 1, 1902, to Nov. 12, 1902).	Dec. 23, 5.20 p. m.	1,677.12	1,677.12
8	85 (5)	Chesapeake and Ohio Coal Agency (Oct. 31, 1902).	Dec. 23, 5.45 p. m.	745.50	745.50
9	87 (30)	Virginia Passenger and Power Co. (Sept. 29, 1902, to Dec. 23, 1902).	Dec. 23, 5.46 p. m.	6,290.98	6,229.79
10	88	Longworth, W. P., & Co. (Dec. 10, 1902).	Dec. 23, 6.15 p. m.	25.00	.....
11	89 (101)	Crocker-Wheeler Co. (Oct. 7, 1902, to Nov. 10, 1902).	Dec. 23, 6.15 p. m.	426.96	426.49
12	91 (120)	Baldwin & Brown (Aug. 1, 1902, to Dec. 22, 1902).	Dec. 23, 6.40 p. m.	2,885.34	340.93
13a	101 (113)	Smith-Courtney Co. (Oct. 8, 1901, to Dec. 12, 1902).	Dec. 23, 6.50 p. m.	5,225.52	5,200.95
13b	115 (109)	Crucible Steel Co. of America (Apr. 15, 1902, to Oct. 30, 1902).	Dec. 23, 6.50 p. m.	804.08	885.62

STATEMENT No. 3.—*Supply liens*—Continued.*First National Bank of Richmond et al. v. William R. Trigg Company and others*—Continued.

Rank.	D. B. 176 A.	Line or.	Date of record.	Amount claimed.	Amount proved.
14	118 (77)	Tanner Paint and Oil Co. (Mar. 7, 1902, to Dec. 17, 1902).	1902. Dec. 23, 7.15 p. m.	\$3,994.70	\$3,994.16
15	125 (87)	Tower-Binford Elec. and Mfg. Co. (Aug. 13, 1902, to Dec. 16, 1902).	Dec. 23, 7.30 p. m.	1,273.39	1,265.64
16	130 (79)	Lindsay, J. L. (July 2, 1902, to Dec. 17, 1902).	Dec. 23, 8 p. m.	1,273.20	1,065.31
17	137 (27)	Litchenstein's Sons, L. (May 3, 1902, to Dec. 18, 1902).	Dec. 24, 9 a. m.	558.13	558.13
18	139 (40)	C. & O. Coal and Coke Co. (June 10, 1902, to Nov. 28, 1902).	Dec. 24, 9.45 a. m.	137.92	137.92
19	141 (391)	Bell Book & Stationery Co. (July 21, 1902, to Dec. 10, 1902).	Dec. 23, 10.35 a. m.	466.05	466.05
20a	143 (131)	Harwood Brothers (Sept. 26, 1902, to Nov. 18, 1902).	Dec. 23, 11.05 a. m.	213.13	213.13
20b	144 (54)	Tallafarro, J. L. (Nov. 25, 1902, to Dec. 20, 1902).	Dec. 24, 11.05 a. m.	169.00	50.15
21	147 (54)	Savage, N. R., & Son (Aug. 9, 1902, to Dec. 20, 1902).	Dec. 24, 11.10 a. m.	151.92	151.92
22a	149 (52)	Standard Oil Co. (June 6, 1902, to Dec. 20, 1902).	Dec. 24, 11.10 a. m.	1,446.49	1,446.49
22b	153 (53)	Daniel, W. S., & Co. (Oct. 3, 1902, to Nov. 24, 1902).	Dec. 24, 11.10 a. m.	220.50	220.50
23	154	Waddey Co., Everett (May 1, 1902, to Dec. 18, 1902).	Dec. 24, 11.23 a. m.	684.97	.....
24	159	The Tredegar Company (Sept. 10, 1902, to Nov. 28, 1902).	Dec. 24, 11.23 a. m.	575.88	.....
25a	161	Rose, L. & Co. (Nov. 28, 1902).	Dec. 24, 11.45 a. m.	37.00	.....
25b	162	Binswagner & Co. (May 3, 1902, to Oct. 28, 1902).	Dec. 24, 11.45 a. m.	316.36	.....
26	163 (42)	Richmond Ice Company (Sept. 15, 1902, to Oct. 3, 1902).	Dec. 24, 11.55 a. m.	60.00	46.68
27	165 (62)	Drever, John, & Co. (July 11, 1902, to Nov. 17, 1902).	Dec. 24, 12.07 p. m.	317.97	317.97
28	168	Smokeless Fuel Co. (Oct. 11, 1902, to Dec. 23, 1902).	Dec. 24, 1.15 p. m.	1,062.17	881.13
29	169	McGraw, James W. (Nov. 6, 1902, to Dec. 20, 1902).	Dec. 24, 2.45 p. m.	1,225.19	.....
30	174 (81)	Harbaugh, S. J. (Nov. 20, 1902).	Dec. 23, 3 p. m.	28.20	28.20
31	175 (41)	Moore, Warner & Co. (Aug. 4, 1902, to Nov. 12, 1902).	Dec. 24, 4.15 p. m.	404.87	404.87
32	177 (80)	Bradley Cons. Co., W. B. (Mar. 19, 1902, to Dec. 23, 1902).	Dec. 24, 5 p. m.	4,017.78	4,017.78
33	182	Currie & Co. (June 2, 1902, to Dec. 9, 1902).	Dec. 26, 10.45 a. m.	943.44	.....
34	185 (109)	Crucible Steel Co. of America (Apr. 15 to Oct. 30, 1902).	Dec. 26, 12.30 p. m.	894.08	885.62
35	188	Vaughan, Jas. T., & Co. (Jan. 4, 1902, to Dec. 18, 1902).	Dec. 26, 2 p. m.	185.56	.....
36	192 (96)	Morse Brothers (Oct. 11, 1902, to Oct. 18, 1902).	Dec. 26, 4.12 p. m.	1,906.86	931.62
37	193 (30)	Richmond Passenger and Power Co. (Sept. and Aug., 1902).	Dec. 26, 5.45 p. m.	2,000.00	2,100.00

STATEMENT NO. 3.—*Supply liens*—Continued.

First National Bank of Richmond et al. v. William R. Trigg Company and others—Continued.

Rank	D. B. 176 A.	Lienor.	Date of record.	Amount claimed.	Amount proved.
			1902.		
38	194 (55)	Mutual Ice Delivery Co. (Sept. 1, 1902, to Dec. 1, 1902).	Dec. 27, 3 p. m.	\$193.87	\$193.87
39a	197	Southern & Co. (Aug. 6, 1902, to Dec. 9, 1902).	Dec. 30, 11.30 a. m.	579.80	579.80
39b	199	Carbon Steel Co. (Apr. 1, 1902, to Nov. 29, 1902).	Dec. 30, 11.30 a. m.	28,437.88	28,438.88
40	203	Sayer & Schultz (May 2, 1902, to Dec. 9, 1902).	Dec. 30, 12 m.	1,134.64	1,134.64
41	207	Williamson Bros. Co. (Sept. 18, 1902, to Dec. 16, 1902).	Dec. 31, 3 p. m.	2,288.00	2,288.00
			1903.		
42	208	Southern Paper Co. (Nov. 19, 1902, to Dec. 11, 1902).	Jan. 1, 12.30 p. m.	38.41	.....
43	210	Hilles & Jones Co. (July 2, 1902, to Oct. 27, 1902).	Jan. 2, 8.30 a. m.	1,014.34	1,014.35
44	209	Watkins-Cottrell Co. (July 2, 1902, to Oct. 27, 1902).	Jan. 2, 12.30 p. m.	39.69	39.69
45	214	Morris Machine Co. (Oct. 11, 1902).	Jan. 2, 5.30 p. m.	1,005.00	1,005.00
46	215	Cory, Chas., & Son (Nov. 26, 1902).	Jan. 3, 11.55 a. m.	3,104.76	3,014.76
47	131	Harwood Bros. (Sept. 27, 1902, to Dec. 8, 1902).	Jan. 3, 12.45 p. m.	48.26	48.26
48	219 (35)	Purcell, Ladd & Co. (Sept. 2, 1902, to Dec. 4, 1902).	Jan. 3, 4.10 p. m.	120.30	119.80
49	221	Powers-Taylor Drug Co. (Aug. 1, 1902, to Dec. 23, 1902).	Jan. 5, 12 m.	76.24	.....
50	222	Edgar, C. and A. (July 1, 1902, to Dec. 15, 1902).	Jan. 5, 2.45 p. m.	455.60	.....
51	227 (63)	Lucas, John, & Co. (Sept. 23, 1902, to Nov. 20, 1902).	Jan. 5, 3.17 p. m.	70.98	.....
52	229	Dickerson, J. C. (Oct. 16, 1902, to Oct. 31, 1902).	Jan. 5, 4.20 p. m.	15.85	.....
53	230	Bucyrus Co., The (Oct. 18, 1902).	Jan. 5, 5.35 p. m.	20,744.08	20,744.08
54	233	C. and O. Ry. Co. (Nov. 2, 1902).	Jan. 6, 10.15 p. m.	158.75	.....
55	234	Baughman Stationery Co. (July 3, 1902, to Dec. 10, 1902).	Jan. 6, 2.50 p. m.	120.55	.....
56	236 (64)	Graves, N. Z. & Co. (July 21, 1902, to Nov. 8, 1902).	Jan. 6, 3.15 p. m.	1,905.03	1,905.03
57	238 (102)	Jameson, McKenzie & Evans (July 18, 1902, to Dec. 12, 1902).	Jan. 8, 10.30 a. m.	1,387.19	1,380.67
58	242 (65)	Adams and Westlake Co. (Aug. 4, 1902, to Dec. 4, 1902).	Jan. 8, 11 a. m.	512.20	512.20
59	243 (47)	Cleveland City Forge and Iron Co. (Sept. 11, 1902, to Dec. 4, 1902).	Jan. 8, 11.05 a. m.	2,092.68	2,092.68
60	251 (56)	Low Moor Iron Co. of Va. (Nov. 5, 1902).	Jan. 9, 10 a. m.	613.83	613.83
61	253 (107)	Hyde Windlass Co. (July 24 to Oct. 30, 1902).	Jan. 9, 11 a. m.	4,487.82	4,487.82
62a	255 (11)	Diamond State Steel Co. (Aug. 9, 1902, to Dec. 10, 1902).	Jan. 13, 11 a. m.	1,082.04	1,082.04
62b	264 (12)	Lovell, F. H. & Co. (July 16, 1902, to Oct. 27, 1902).	Jan. 13, 11 a. m.	1,570.14	1,570.14
62c	269 (13)	Ansonia Brass and Copper Co. (July 10, 1902, to Oct. 27, 1902).	Jan. 13, 11 a. m.	722.18	722.18

STATEMENT NO. 3.—Supply liens—Continued.

First National Bank of Richmond et al. v. William R. Trigg Company and others—Continued.

Rank.	D. B. 176 A.	Lineer.	Date of record.	Amount claimed.	Amount proved
62d	274 (43)	Laidlaw-Dunn-Gordon Co. (Aug. 10, 1902, to Dec. 23, 1902).	1903. Jan. 13, 11 a. m.	\$2,250.00	\$1,852.66
63	277 (66)	Lewis, John T., Bros. Co. (Nov. 29, 1902).	Jan. 13, 3.15 p. m.	560.74	557.60
64	278	Crew, P. J., & Co. (Sept. 2, 1902, to Dec. 12, 1902).	Jan. 13, 4.40 p. m.	281.74	.....
65a	279 (44)	Brown Holsting Machinery Co. (July 10, 1902, to Nov. 10, 1902).	Jan. 14, 8.45 p. m.	2,000.00	Rejected.
65b	281	International Sprinkler Co. (Oct. 4, 1902, to Oct. 29, 1902).	Jan. 14, 8.45 a. m.	169.96	169.96
65c	286	Morris, Wheeler & Co. (Aug. 7, 1902, to Nov. 17, 1902).	Jan. 14, 8.45 a. m.	3,087.82	3,087.82
66	294	Homeler & Clarke (May 1, 1902, to Sept. 22, 1902).	Jan. 14, 10.20 a. m.	116.00	.....
67	296 (100)	American Locomotive Co. (Nov. 26, 1902, to Dec. 30, 1902).	Jan. 14, 5 p. m.	266.69	266.69
68a	298 (15)	National Tube Co. (Aug. 27, 1902, to Oct. 4, 1902).	Jan. 14, 7.30 p. m.	1,182.18	1,182.18
68b	302 (20)	Carnegie Steel Co. (Aug. 13, 1902, to Oct. 4, 1902).	Jan. 14, 7.30 p. m.	4,339.34	4,338.34
69	308 (106)	Shelby Iron Co. (Sept. 26, 1902, at 30 d.).	Jan. 14, 7.30 p. m.	1,300.00	1,300.00
70	310 (98)	Curtis, J. T. W. (Dec. 18, 1902).	Jan. 19, 11.15 a. m.	476.69	300.00
71	311 (16)	Lunkenheimer Co., The (May 2, 1902, to Nov. 12, 1902, at 60 d.).	Jan. 20, 10 a. m.	4,768.32	4,768.32
72	330 (17)	Chicago Pneumatic Tool Co. (Feb. 1, 1902, to Dec. 8, 1902).	Jan. 20, 11.05 a. m.	5,122.91	5,096.67
73	335 (58)	Wheeling Corrugating Co. (Nov. 13, 1902, to Dec. 3, 1902).	Jan. 20, 5.40 p. m.	217.85	217.60
74	337 (18)	Mott Iron Works (July 23, 1902, to Dec. 10, 1902).	Jan. 2, 12 m.	2,029.79	2,029.79
75	344 (21)	Kensby & Mattison Co. (June 23, 1902, to Sept. 29, 1902.)	Jan. 24, 10.45 a. m.	1,188.85	1,188.85
76	347 (93)	McGowan, J. H., Co. (Oct. 24, 1902, to Nov. 18, 1902).	Jan. 31, 12 m.	65.50	65.50
77	348 (94)	Quaker City Rubber Co. (Nov. 3, 1902).	Feb. 2, 11 a. m.	41.25	41.25
78	350 (67)	Kanawha Fuel Co. (Dec. 1, 1902).	Feb. 4, 6 p. m.	208.34	208.34
79	352 (90)	Swoyer, A. P., & Co. (Apr. 12, 1902, to Dec. 4, 1902).	Feb. 7, 4 p. m.	1,329.17	1,278.22
80	357 (68)	Fairbanks Co. (Nov. 2, 1902, to Nov. 29, 1902).	Feb. 9, 3.15 p. m.	683.60	683.60
81	359 (19)	American Steel Casting Co. (Sept. 10, 1902, to Nov. 26, 1902, at 30 d.).	Feb. 13, 8.55 p. m.	1,246.30	1,246.30
82	363 (70)	Rushmore Dynamo Works (Nov. 21, 1902, at 30 d.).	Feb. 19, 3 p. m.	157.86	157.86
83	480 (33)	Bass Foundry and Ma- chine Works (Sept. 3, 1902, note due Jan. 26, 1903).	Mar. 3, 11.15 a. m.	675.89	667.00
84	483 (76)	Ashcroft Manufacturing Co. (Dec. 23, 1902).	Mar. 17, 6 p. m.	87.78	.....
85	485 (69)	Manning, Maxwell & Moore (Dec. 17, 1900, to Dec. 16, 1902).	Mar. 17, 6 p. m.	10,130.20	10,123.10

STATEMENT NO. 3.—*Supply liens*—Continued..

First National Bank of Richmond et al. v. William R. Trigg Company and others—Continued.

Rank.	D. B. 176 A.	Lienor.	Date of record.	Amount claimed.	Amount proved.
			1903.		
86	496 (133)	Leslie, J. S. (June 7, 1902, to Dec. 4, 1902).	Apr. 2, 2 p. m.	\$1,279.00	\$987.33
87	498 (97)	Smokeless Fuel Co. (Oct. 24, 1902, to Dec. 3, 1902).	Apr. 6, 5.30 p. m.	294.59	294.59
88	205 (112)	Speakman Supply and Pipe Co. (Oct. 30, 1902, to Nov. 29, 1902).	Apr. 23, 5.25 p. m.	585.30	585.30
89	236 (22)	Blake Manufacturing Co., Geo. F. (Dec. 3, 1902, at 60d.).	Apr. 25, 6.45 p. m.	3,700.00	3,475.00
				308,438.84	292,412.03

MEMORANDUM.—See "Remarks," post for claims indicated by *; "Defective proof," post for claims indicated by **; "No proof," post for claims indicated by ; "Outstanding notes," post for claims indicated by *1.

Supply liens claimed..... \$308,438.84
Amounts proved..... 292,412.03

Difference..... 16,026.81
No proof offered..... 4,083.51

Difference..... 11,943.30
Supply liens shown..... 292,412.03
Defective proof..... \$4,828.21
Notes outstanding..... 30,144.46

34,972.67

Supply liens allowed by this report..... 257,439.36

REMARKS.

It is not intended to discuss every lien, but it seems appropriate to take special notice of certain claims, which are now mentioned in the order of rank, being indicated by an asterisk (*).

All claimants of the same rank are given the same number, each one being distinguished by the addition of a letter of the alphabet.

1a. *Merchant & Co.*—The memorandum for this lien was for \$12,536.26. The amount proved was

\$12,143.92. A portion of the claim was represented by notes, but the commissioner does not consider that they were taken in satisfaction of the debt, nor that they amount to novation. This claim is typical of many others. It is regarded as a running account, and illustrates the importance of recording proof of the amount due, in addition to the affidavit for the record of the memorandum. The notes have been surrendered.

1d. *Morris Wheeler & Co.*—The supply lien claimed was for \$3,087.82, but the proof showed \$3,091.67 to be due. This leaves a balance of \$3.85 on general account without any security.

1e. *Charles Este.*—The supply lien claimed was for \$9,447.92, but the amount proved was \$8,222.83. This claim has been most vigorously attacked and strenuous efforts have been made to show that it was not a running account and that notes were taken in satisfaction of the account from date to date. The commissioner is of opinion that the proof has not been sufficient to sustain these contentions, and this claim is mentioned as typical of a number of others.

1f. *Hendricks Brothers.*—The memorandum for this lien is made up of items of "bills rendered," but the affidavit declares that it was for "goods and supplies." The commissioner holds that this was a sufficient compliance with the requirements of the statute to show "the amount and consideration" of the claim.

1g. *Babcock & Wilcox*.—This claim is somewhat similar to that of Hendricks Brothers, and the commissioner holds that the memorandum and affidavit was a sufficient compliance with the requirements of the statute. The amount claimed was \$24,240, but \$240 of this is interest. As the commissioner is reporting all supply liens without any allowance for interest, this claim is reported at \$24,000.

1k. *S. H. Hawes & Co.*—A portion of the supplies furnished by this claimant were used in construction of the plant, but the commissioner holds that this does not affect the lien. This claim is cited as typical of certain others.

2. *C. C. Knight & Co.*—The memorandum for this lien claimed \$5,163.56, but the evidence shows that there is due \$5,398.71. This leaves the sum of \$235.15 due on general account, without any security.

12. *Baldwin & Brown*.—The memorandum for supply lien filed by this claimant was for \$2,885.34. He also filed a mechanic's lien at the same time, and has elected to charge only \$340.93 to the supply lien.

20b. *J. L. Taliaferro*.—The memorandum for this supply lien was for \$169.09, but the claimant filed a mechanic's lien at the same time and has elected to charge only \$50.15 on the supply lien.

22a. *Standard Oil Co.*—The memorandum for this supply lien was for \$1,446.49, but the evidence shows \$1,452.49 to be due the claimant. This leaves a balance of \$6 due upon general account, without security.

28 and 87. *Smokeless Fuel Co.*—This claimant filed two memoranda for supply liens:

(a) Filed on December 24, 1902, for \$1,062.17. The evidence shows that the true amount due on this claim is \$881.13.

(b) The second was filed on April 6, 1903, for \$294.59, which amount the evidence shows to be correct.

The last item of this claim was dated December 3, 1903. The supplies were actually received by the Trigg Company on December 17 and December 20, 1902. The testimony shows that these supplies were sold on a credit of from sixty days to four months, and the commissioner holds that this memorandum was filed within the limitation of the statute.

53. *The Bucyrus Co.*—This claimant filed a memorandum for supply lien of \$20,744.08 on January 5, 1903. It also filed a petition, claiming that the title to said supplies never passed out of it to the Trigg Company. The matters involved in this petition have been passed upon by the court and taken upon appeal to the Supreme Court of Appeals. The commissioner, therefore, reports the filing of the memorandum without intending to pass upon the validity of the claim as a supply lien.

62d. *Laidlaw-Dunn-Gordon Co.*—The supplies claimed.—*The supplies claimed* consist of a large air-compressing machine. This machine was delivered to the Trigg Company on August 10, 1902, but required a large amount of work to be done upon it

before being put into operation. The testimony shows that it was not accepted until December 23, 1902. The commissioner, therefore, holds that the bill did not fall due until that time, and that the memorandum was filed within the limitation of the statute. The amount claimed in the memorandum was \$2,250, but the evidence shows that the true amount due is \$1,852.66.

65a. *Brown Hoisting Machinery Co.*—The supply for which this claim is made consisted of a 10-ton locomotive crane, shipped from Cleveland, Ohio, June 10, 1902. Thirty days after the shipment the claimant took a note at four months, with interest added. This indicates that the sale was made on thirty days' time. The testimony of the witness for the claimant is confused and unsatisfactory. The commissioner is controlled rather by the contemporaneous acts of the parties than by the uncertain testimony of an interested witness given more than a year after the transaction. The acceptance of a note, with interest from date, clearly indicates that the bill was due on that date; and the further fact that the date was exactly thirty days after the shipment seems to remove all reasonable doubt concerning the accuracy of this fact. The commissioner therefore holds that the bill fell due on July 10, 1902, and that the memorandum filed on January 14, 1903, did not come within the limitation of the statute. He therefore reports that the lien claimed should be rejected.

65c. *Morris Wheeler & Co.*—The memorandum for this claim was for \$3,087.82. The amount proved was \$3,091.67, leaving a balance of \$3.85 due on general account, without security.

69. *Shelby Iron Co.*—The supplies of this claim were furnished on September 26, 1902, on a credit of thirty days. The commissioner therefore holds that the memorandum filed on January 15, 1903, was within the limitation of the statute.

80. *The Fairbanks Co.*—The memorandum for this claim was for \$683.60. The amount proved was \$1,080.86, leaving a balance of \$397.26 due on open account, without security.

81. *American Steel Casting Co.*—The memorandum for this lien was for \$1,246.30. The amount proved was \$1,264.60, leaving a balance of \$18.30 due on general account, without security.

88. *Speakman Supply and Pipe Co.*—The last item of this claim is dated November 29, 1902. The memorandum was filed April 23, 1903, and the affidavit therewith states that the last item of the bill became due and payable on January 29, 1903. This indicates that the supplies were sold on sixty days' time, and in the absence of any evidence to the contrary the commissioner holds that the memorandum was filed within the limitation of the statute.

89. *Geo. F. Blake Manufacturing Co.*—The bill for these supplies is dated December 3, 1902, and the testimony is that they were sold on sixty days' time.

The memorandum was filed April 25, 1903, and the commissioner holds that it was within the limitations of the statute. But the claim is subject to a credit of \$225, leaving the supply lien good for \$3,475. And in addition to this amount for which a lien was claimed there is also due the sum of \$2,400 represented by a note, for which no lien was claimed.

DEFECTIVE PROOF.

Claims not allowed because no evidence has been submitted to show that the supplies furnished were "necessary to the operation" of the plant. These claims are marked with ** in statement No. 3-C.

Rank No.	Name.	Amount.
67	American Locomotive Co.....	\$266.69
19	Bell Book and Stationery Co.....	466.05
18	Chesapeake and Ohio Coal and Coke Co.....	137.92
11	Crocker-Wheeler Co.....	426.49
31	Warner Moore & Co.....	404.87
45	Morris Machine Works.....	1,005.00
38	Mutual Ice Delivery Co.....	193.87
26	Richmond Ice Co.....	46.68
21	N. R. Savage & Son.....	151.62
42	Southern Paper Co.....	38.41
79	A. P. Swoyer & Co.....	1,278.22
44	Watkins-Cottrell Co.....	39.69
3	Woodard & Son.....	372.70
		4,828.21

NO PROOF.

The following claims are not allowed, because no evidence has been submitted to show either the amount due or that the supplies furnished were necessary to the operation of the plant. These claims are marked on statement 3-C.

Rank No.	Name.	Amount.
84	Ashcroft Manufacturing Co.	\$87.78
55	Baughman Stationery Co.	120.55
25b	Bimwanger & Co.	316.36
54	Chesapeake and Ohio Ry. Co.	158.75
64	P. J. Crew & Co.	261.74
33	Currie Co.	15.85
52	J. C. Dickerson.	943.44
50	C. & A. Edgar.	15.85
66	Homeier & Clark.	455.60
10	W. P. Longnorth & Co.	116.00
29	James McGraw.	25.00
49	Powers Taylor Drug Co.	1,225.19
25a	L. Rose & Co.	76.24
24	The Tredegar Co.	37.00
35	Jas. T. Vaughan & Co.	575.88
23	Everett Wadley & Co.	183.56
		684.57
		4,083.51

OUTSTANDING NOTES.

The following claims have not been allowed to the extent represented, in whole or in part, by negotiable notes which have not been surrendered. These claims are designated *1 on Statement 3-C, and the amount of notes is shown below:

Rank No.	Amount proved.	Name.	Note.
(a)	\$667.00		
(b)			
32	3,455.66	W. B. Bradley Construction Co.	\$4,017.78
27	317.72	John Dreyer & Co.	317.72
62a	1,081.04	Diamond State Steel Co.	1,081.04
56	1,855.00	N. Z. Graves & Co.	1,855.00
5	637.96	Edgar G. Gunn.	601.22
86	987.33	J. S. Leslie.	927.33
85	10,123.10	Manning, Maxwell & Moore.	10,000.00
2a	3,697.18	Phoenix Iron Co.	3,421.32
37	2,000.00	Richmond Passenger & Power Co.	2,000.00
c 1)	4,000.00		
79	1,278.22	A. P. Swoyer & Co.	1,000.00
15	1,265.64	Tower-Binford Electric & Mfg. Co.	782.73
9	6,229.79	Virginia Passenger & Power Co.	4,140.32
			30,144.46

* Error. This note was filed before Commissioner Daniel.

6 Error. No lien was claimed for this note. (Ante, p. 67, post, p. 73.)

c Error.

Amounts allowed on above claims.

Rank.	In excess of notes.	
56. Graves, N. Z., & Co.....	\$1,905. 03	
Note.....	1,855. 00	
		\$50. 03
5. Gunn, Edgar G.....	637. 96	
Note.....	601. 22	
		36. 74
86. Leslie, J. S.....	987. 33	
Note.....	927. 33	
		60. 00
85. Manning, Maxwell & Moore.....	10, 123. 10	
Note.....	10, 000. 00	
		123. 10
2a. Phoenix Iron Co.	3 697. 18	
Note.....	3, 421. 32	
		275. 86
1j. Roelker, H. B.....	4, 000. 00	
Note.....	2, 000. 00	
		2, 000. 00
79. Swayer, A. P. & Co.....	1, 278. 22	
Note.....	1, 000. 00	
		278. 22
15. Tower-Binford Co.....	1, 265. 64	
Note.....	782. 73	
		482. 91
9. Va. P. & P. Co.....	6, 229. 79	
Note.....	4, 140. 32	
		2, 089. 47

FOURTH.

The receiver has had very valuable aid from Miss N. J. Kellogg, the stenographer who has been in the employment of the receiver. Practically all the depositions were taken by her before Commissioner Daniel, and the greater part of them were transcribed by her at night out of office hours. In addition to this work, the present commissioner has dictated to her this his report, and it has been wholly typewritten by her, four copies thereof having been made for the convenience of counsel. The commissioner thinks that some extra pay should be made Miss Kellogg for the above services. She has modestly asked for the sum

of \$50, and he takes great pleasure in recommending this allowance.

The commissioner regrets that he has not been able to complete this report as quickly as desired, but the vast amount of detail rendered it impossible for him to conclude his report with accuracy in a shorter time.

All of which is respectfully submitted.

EUGENE C. MASSIE,
Commissioner in Chancery.

Commissioner's fee, \$400.

SUPREME COURT OF APPEALS OF VIRGINIA, ss:

I, H. Stewart Jones, clerk of the Supreme Court of Appeals of Virginia, do hereby certify that the foregoing is a true and accurate copy of Commissioner Massie's report on file and of record in my said office in the case of First National Bank of Richmond et al. against William R. Trigg Co. et als.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Richmond, this 14th day of October, 1910.

[SEAL.]

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

SUPREME COURT OF APPEALS OF VIRGINIA, ss:

I, James Keith, one of the judges and president of the Supreme Court of Appeals of Virginia, hereby certify that the foregoing attestation made by H. Stewart Jones, the clerk of said court, is in due form, and the foregoing is his true and genuine signature.

Given under my hand and seal this 14th day of October, 1910.

[SEAL.]

JAMES KEITH,

*President Supreme Court of Appeals
of the State of Virginia.*

SUPREME COURT OF APPEALS OF VIRGINIA, ss:

I, H. Stewart Jones, clerk of the Supreme Court of Appeals of the State of Virginia, do hereby certify that the Hon. James Keith, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, one of the judges and president of the Supreme Court of Appeals of the State of Virginia, duly commissioned and qualified.

Witness my hand and seal of said court this 14th day of October, 1910.

[SEAL.]

H. STEWART JONES,

*Clerk Supreme Court of Appeals
of the State of Virginia.*



Supreme Court of the United States

October Term, 1910.

No. 458.

UNITED STATES, PLAINTIFF IN ERROR,

vs.

ANSONIA BRASS & COPPER COMPANY, AMERICAN
STEEL CASTINGS COMPANY, AND OTHERS,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE
OF VIRGINIA.

BRIEF OF EPPA HUNTON, JR., FOR CERTAIN OF THE
DEFENDANTS IN ERROR.

This is a writ of error to the Supreme Court of Appeals of
the State of Virginia.

STATEMENT OF THE CASE.

Prior to and during the year 1902, the William R. Trigg Company, a corporation organized under the laws of the State of Virginia, was engaged, at Richmond, Virginia, in the business of building and manufacturing ships, boilers, engines, and parts thereof, and during the year 1902 was engaged in the

construction of the following ships for the United States Government: A sea-going suction dredge, known as the "Ben-yuard," for the War Department; a revenue cutter for the Treasury Department, called the "Mohawk"; a cruiser for the Navy Department, called the "Galveston."

The contract for the sea-going suction dredge, known as the "Ben-yuard," is dated September 9, 1901, and will be found on page 406 of the printed record.

The contract for the "Mohawk" is dated April 20, 1900, and will be found on page 282 of the printed record.

The contract for the "Galveston" is dated December 14, 1899, and will be found on page 230 of the printed record.

In December, 1902, S. H. Hawes & Company, filed in the Chancery Court of the city of Richmond a Bill in Equity on behalf of themselves and all other creditors similarly situated, alleging that they are creditors of the William R. Trigg Company and have a lien for their debt under the supply lien law of the State of Virginia and that the William R. Trigg Company is insolvent, and ask for the appointment of a receiver to take possession of and administer the assets of said company and that an account may be taken of the assets and claims against said company and the liens upon its property and their respective priorities and for such other, further, and general relief as the nature of the case may require and to equity may seem meet. This bill will be found on pages 57 to 60 of the printed record.

In accordance with the prayer of the bill, on the 23rd of December, 1902, a receiver was appointed but the decree appointing this receiver is not in the record. See agreement of counsel as to the record on page 46 of the printed record.

This receiver took possession of all the property of the William R. Trigg Company, including the three aforesaid vessels it was building for the United States Government.

The United States, claiming title to said vessels, and desiring to protect any and all creditors of the William R. Trigg

Company holding any liens, claims, or demands against it, under and pursuant to the terms and provisions of Sections 3753 and 3754 of the United States Revised Statutes, executed a stipulation providing for the release and discharge of said vessels and the materials on hand applicable thereto upon condition that "if a final judgment is hereafter given and awarded in the court of last resort to which the Secretary of the Treasury may deem it proper to cause such proceedings, by which said property is at present held, to be carried, affirming the claim or claims for security or satisfaction, for which such proceedings have been instituted, and the right of any person or persons, firms, or corporations asserting the same to enforce against said property by means of such proceedings, notwithstanding the claims of the United States thereto, such final judgment shall be deemed to all intents and purposes as a full and final determination of the rights of such person or persons, firms or corporations, as shall entitle such person or persons, firms or corporations, as against the United States to such rights as he or they would have had in case the possession of such property had not been changed," etc. (P. R. 229.)

The stipulations as to the "Benyard," the "Mohawk" and the "Galveston" will be found on pages 410, 275, and 225, respectively, of the printed record.

This suit was so proceeded in that, on September 9, 1909, two opinions were handed down by the Supreme Court of Appeals, one by the president of the court, Judge James Keith (P. R. 375), the other by Judge R. H. Cardwell (P. R. 385).

The opinion handed down by Judge Keith deals with no question involved in this writ of error.

The opinion handed down by Judge Cardwell, among other things not involved in this writ of error, holds: First, that the title to each of these vessels is in the William R. Trigg Company; second, that the supply liens under the Virginia supply statute are superior to any claim of right in the government to the vessels or lien thereon reserved in said contracts;

third, that the vessels are liable to the claims of the general creditors of the William R. Trigg Company as they may be established in this cause.

Judges Buchanan and Harrison dissent from the opinion of the court so far as it holds that the supply lien creditors have claim upon the vessel known as the "Benyuard" superior to that of the United States Government in and to that vessel (P. R. 406).

On September 10, 1909 (P. R. 416), the Supreme Court of Appeals of Virginia entered its order remanding this cause to the Chancery Court of the city of Richmond for further proceedings to be had therein in accordance with the views expressed in the written opinion of the court.

The United States filed their petition for writ of error in this cause for the purpose of having this decision of the Supreme Court of Appeals of Virginia reviewed by the Supreme Court of the United States.

They filed the following assignments of error, which will be found on pages 418 to 421 of the printed record, and which are as follows:

"I.

That the said Supreme Court of Appeals of Virginia erred in holding and deciding that absolute title to the unfinished dredge 'Benyuard,' its hull, engines, machinery, and all of its parts and belongings, complete and incomplete, had not vested in the United States at the time of the institution of the said cause in the Chancery Court of the city of Richmond, on the 23rd day of December, 1902, and in denying the claim of the United States to such title, such title being especially set up and claimed under an authority exercised under the United States, to-wit, two certain contracts, set out in the record, both dated September 9, 1901, one for

the construction of the hull and propelling machinery of the said dredge, the other for the construction and installation of the pumping machinery therein, said contracts having been entered into pursuant to authority conferred by the laws of the United States, the United States being represented by Captain J. C. Sanford, Corps of Engineers, United States Army, party of the first part, the said William R. Trigg Company being the party of the second part.

II.

That the said Supreme Court of Appeals of Virginia erred in holding and deciding that the lien in favor of the United States upon the revenue cutter "Mohawk," and the materials on hand for use in her construction, for all moneys advanced on account thereof, which lien was reserved in a certain written contract, dated April 20, 1900, was not paramount to the claims of the supply creditors, and of all other creditors, of the said William R. Trigg Company, said lien, right, or privilege having been specially set up and claimed on behalf of the United States as a paramount lien under an authority exercised under the United States, to-wit, the said contract of April 20, 1900, between the said William R. Trigg Company, party of the first part, and L. J. Gage, the then Secretary of the Treasury of the United States, representing the United States, party of the second part, said contract being authorized by the laws of the United States, and the said lien, right or privilege having been reserved to the United States in said contract in conformity to the express provisions of the joint resolution of Congress approved May 5, 1894, 'providing for partial payments for work, and so forth, for vessels constructed under the direction of the Secretary of the Treasury.' 28 Stat., 582-3.

III.

That the said Supreme Court of Appeals of Virginia erred in holding and deciding in regard to the cruiser "Galveston" in the following particulars:

a. In deciding that the lien in favor of the United States upon the said cruiser and the materials on hand for use in her construction, reserved in the written contract, dated December 14, 1899, by and between the said William R. Trigg Company, party of the first part, and the United States, represented by the then Secretary of the Navy, party of the second part, as a paramount lien was not paramount to the claims of the supply creditors and of all other creditors of the said company, said lien, right or privilege having been specially set up and claimed on behalf of the United States as a paramount lien under an authority exercised under the United States, to-wit, the said contract of December 14, 1899, which was authorized by the laws of the United States and especially by the act entitled 'An act making appropriations for the naval service for the fiscal year ending June 30, 1900, and for other purposes,' approved March 3, 1899.

b. In deciding that title to the said cruiser and materials on hand for use in her construction did not vest in the United States by virtue of certain proceedings had after the institution of the said suit in the said Chancery Court and by virtue of certain provisions in the said last-mentioned contract, which title was specially set up and claimed by the United States by virtue of the said contract and of said proceedings; that is to say, under an authority exercised under the United States, the facts in regard to which are fully set forth

in the "Stipulation with respect to the cruiser 'Galveston' ", dated June 22, 1903, filed with the record as a part thereof, and to which reference is hereby made.

IV.

That the said Supreme Court of Appeals of Virginia erred in holding and deciding against the immunity specially set up and claimed under the Constitution by and on behalf of the United States, to the effect that the rights and interests of the United States in, to, and upon, said vessels, namely the 'Benyuard', the 'Mohawk', and the 'Galveston', were in nowise subject to or affected by the statute of Virginia commonly known as the labor and supply lien statute, said immunity being claimed on the ground that the United States, as a sovereign, is not subject to the operation of the said state statute, and consequently that the contracts for the construction of the said vessels were not made with reference to said statute, even if the same when passed by the legislature of Virginia was intended to embrace transactions of the United States as well as those of private individuals or corporations, which was denied by the United States.

V.

That the said Supreme Court of Appeals of Virginia erred in holding and deciding that the said statute of Virginia, known as the labor and supply lien statute, was valid and operative so far as the rights and interests of the United States in and to the three vessels aforesaid were concerned, the validity of the said statute so interpreted having been drawn in question by the United States on the ground of its being repugnant to the Con-

stitution and laws of the United States; in other words, that the said statute so interpreted is in conflict with the fundamental principle that the States have no power to retard, impede, burden, or in any manner control, or interfere with the operations of the Federal Government, since such power would be in irreconcilable antagonism to the sovereign authority which it was the purpose of the Federal Constitution to ordain and establish. The several contracts hereinbefore mentioned, for the construction of the said vessels, were, therefore, not made with reference to the said State statute nor did the said statute operate as a limitation upon the power of the said William R. Trigg Company, a corporation, to contract with the United States in the matters aforesaid. Granting that the United States, when it acquires property which at the time is subject to a lien, takes the property *cum onere*, yet here, as the record shows, the interests claimed by the Government in and to the said vessels were acquired before the claims of the William R. Trigg Company accrued.

VI.

That the said Supreme Court of Appeals of Virginia erred in holding and deciding that the said labor and supply lien statute of Virginia was valid and operative so far as the rights and interests of the United States in and to the three vessels aforesaid were concerned, the validity of the said statute having been drawn in question on behalf of the United States on the ground of its being in conflict with and repugnant to, the 14th Amendment to the Constitution of the United States."

ARGUMENT.

I.

This case is before this court under the terms and provisions of Section 709 U. S. Revised Statutes, which is Section 25 of the Judiciary Act of 1789 as amended.

Under this statute, three classes of cases are reviewable by this court upon writ of error to a State court as stated by Mr. Taylor in his work on the Jurisdiction and Procedure of the United States Supreme Court; p. 338.

"1. There must have been drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision must have been against the claim to maintain which either was relied upon.

"2. Or there must have been drawn in question a statute of, or an authority exercised under, a State upon the ground of repugnancy to the Constitution or a law or treaty of the United States; and the decision must have been in favor of the validity of the State law or authority in question.

"3. A right must have been claimed under the Constitution or a law or a treaty of, or by virtue of a commission held or authority exercised by, the United States and the decision must have been against the right so claimed."

In considering whether this court has the right to review this decision under the terms and provisions of Section 709, we should bear in mind that "the appellate jurisdiction of this court in cases decided in State courts is very special and limited in its character." *Montgomery vs. Hernandez*, 12 Wheat 129 (6th Lawyers' Ed., 575).

Before considering these assignments of error in detail, let us consider whether any of them, except the sixth and last, present any federal question which will enable this court to review

the decision of the Supreme Court of Appeals of Virginia. It is maintained that none of them except the sixth presents such a federal question.

The first three assignments of error allege that the Supreme Court of Appeals of Virginia erred, in holding that the title to these vessels did not vest in the United States, or that the liens reserved in the several contracts for advances on account of the respective vessels were not paramount to the claims of the supply creditors of the Trigg Company.

The fourth assignment of error alleges that the Supreme Court of Appeals of Virginia erred in deciding against the immunity claimed under the Constitution for the United States, to the effect that the rights and interest of the United States to the said vessels were not affected by the Virginia supply lien statute and that the United States as a sovereign is not affected by said statute.

The fifth assignment of error is because the Supreme Court of Appeals of Virginia held that the Virginia supply lien statute was valid but that said statute is repugnant to the Constitution and laws of the United States because "said statute so interpreted is in conflict with the fundamental principle that the States have no power to retard, impede, burden, or in any manner control, or interfere with the operations of the Federal Government, since such power would be in irreconcilable antagonism to the sovereign authority which it was the purpose of the Federal Constitution to ordain and establish."

The last two assignments of error referred to above allege a Federal question, but to enable this court to review the decision of a State court there must be not only, the allegation of a Federal question, but it must be a real Federal question. There must be at least a color of ground for such an averment.

A few general principles as to the rights and liabilities of the United States as a party to a contract, it is maintained will establish that there is no real Federal question or color of ground for the allegation that there is such a question in any

of these five assignments of error which will give this court the right to review the decision of the Supreme Court of Appeals of Virginia.

When the government enters into a contract with an individual it lays down its sovereign powers and becomes merely a contractor, and is governed by the same laws and the same condition by which any other contractor is. This is a principle which has been frequently announced by the judicial decision in various tribunals and so far as we are advised there has never been dissent therefrom. In a communication to the Senate on January 16, 1795, Alexander Hamilton, then Secretary of the Treasury, pursuant to the act which made it the duty of the Secretary of the Treasury "to digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit," announces this principle in clear and distinct terms:

"When a government enters into a contract with an individual, it deposes as to the matter of the contract, its constitutional authority; and exchanges the character of legislator for the that of a moral agent, with the same rights and obligations as an individual. Its promises may be justly considered as excepted out of its *power to legislate*, unless in aid of them." 3 *Hamilton's Works*, page 518.

This clear enunciation of this principle is made in discussing the right of the Government to tax its own funds.

This principle is announced and approved in a series of cases decided by the Court of Claims.

The first case is *Deming vs. United States*, 1 C. Cl. R. 190. That was a suit against the United States where the claimant agrees to furnish rations to the Marine Corps, and Congress subsequently imposed an additional duty on some of the articles to be furnished whereby the cost of the rations to be fur-

nished is raised. The claimant furnishes the rations and suffers loss and the question was whether the claimant could recover damages arising from the enactment by the United States of a *general law*. In delivering the opinion of the court, Nott, J., uses this language:

“A contract between the government and a private party cannot be *specially* affected by the enactment of a *general law*. The statute bears upon it as it bears upon all similar contracts between citizens, and affects it in no other way. In form, the claimant brings this action against the United States for imposing new conditions upon his contract; in fact he brings it for exercising their sovereign right of enacting laws. But the government entering into a contract, stands not in the attitude of the government exercising its sovereign power of providing laws for the welfare of the State. The United States as a contractor are not responsible for the United States as a lawgiver.”

This case clearly discriminates between the United States in their sovereign capacity and as a lawgiver and the United States as contractor and this difference is alleged as a shield of protection to the United States.

This same question arises in the case of *Jones vs. United States*, 1 C. Cl. R., 384, in which there was a contract made with two civil engineers by the United States for the survey of the districts fixed in the treaty with the Choctaw Indians. The engineers contended that the United States had obstructed them by certain general laws thereafter passed. Judge Nott, in delivering the opinion of the court, uses this language:

“This position cannot be sustained. The two characters which the government possesses as a contractor and as a sovereign cannot be thus fused; nor can the United States while sued in the one character be made

liable in damages for their acts done in the other. Whatever acts the government may do, be they legislative or executive, so long as they be public, and general, cannot be deemed specially to alter, modify, obstruct or violate the particular contracts into which it enters with private persons. . . . This distinction between the public acts and private contracts of the government—not always strictly insisted on in the earlier days of this court—frequently misapprehended in public bodies, and constantly lost sight of by suitors who come before us, we now desire to make so broad and distinct, that hereafter the two cannot be confounded and we repeat, as a principle applicable to all cases, that the United States as a contractor cannot be held liable directly or indirectly for the public acts of the United States as a sovereign.”

In the case of *Wilson vs. United States*, 11 C. Cl. R., 513, the *Deming* case is referred to and approved and extended and the dual character of the government as contractor and sovereign is clearly pointed out.

This question is again considered by the same court in *Southern Pacific vs. United States*, 28 C. Cl. R., 77. The Southern Pacific Railroad presented its petition to the Court of Claims alleging that the government was indebted to it under a contract for services rendered in various capacities, carrying the mail, etc. Judge Peelle in delivering the opinion of the court uses this language:

“We understand the law to be that ‘when a government enters into a contract with an individual it deposes, as to the matter of the contract, its constitutional authority and exchanges the character of a legislator for that of a moral agent, with the same rights and obligations as an individual.’ (3 *Hamilton’s Works*, 518; *United States vs. Bank of Metropolis*, 15 Pet., 392;

Deming vs. United States, 1 C. Cls. R., 191.) If there are exceptions to the rule just stated they do not apply to this action."

This question came up again in the Court of Claims in the case of *Lyons vs. United States*, 30 C. Cls. R., 352. The claim grows out of a contract to furnish earth filling around the Washington Monument. Judge Peelle again delivered the opinion of the court and in it uses this language:

"Are contracts made with the United States controlled by the same general law that controls contracts between individuals?"

The law, as we understand it, was stated by Hamilton in these words: 'When a Government enters into a contract with an individual it deposes, as to the matter of the contract, its constitutional authority and exchanges the character of a legislator for that of a moral agent with the same rights and obligations as an individual.' (3 *Hamilton's Works*, p. 518.)

The general principle there stated was adhered to in the case of the *United States vs. Bank of the Metropolis* (15 *Peters*, 377-392), where the Postmaster General had accepted a draft, the court say, 'When the United States, by its authorized officer, become a party to negotiable paper, they have all the rights and incur all the responsibility of individuals who are parties to such instruments. We know of no difference, except that the United States cannot be sued.'

Such was the holding of this court, in effect, in the *Deming case* (1 C. Cls. R., 191), cited with approval in the *Wilson case* (11 C. Cls. R., 520) and the *Southern Pacific case* (28 C. Cls. R., 77-105).

And, except as stated, we are not aware of any authority to the contrary and none have been cited."

These cases establish this principle beyond controversy so far as the decisions of the Court of Claims can establish them. In some of these cases large amounts were involved, and in the *Southern Pacific* case a large recovery was had against the United States, and no appeal seems to have been taken to the Supreme Court.

This principle is stated in 2nd Beach on the Modern Law of Contracts, Sec. 634 (page 2119), under the heading "Contracts of the United States with its citizens":

"When the government enters into a contract it lays down its constitutional authority and has only the same rights, and is subject to the same obligations as an individual."

The note gives as the authority for this position *Southern Pacific vs. United States*, 28 Court of Claims, 77.

Mr. Story, in his Commentaries on the Constitution of the United States, page 202, Sec. 1330, lays down the same principle:

"In regard to municipal rights and obligations, whatever differences of opinion may arise in regard to the extent to which the common law attaches to the National government, no one can doubt that it must be and ought to be resorted to in order to ascertain many of its obligations. Thus, when a contract is entered into by the United States they naturally and necessarily resort to the common law to interpret its terms and ascertain its obligations. The general rights, duties and limitations which the common law attaches to contracts of a similar character between private individuals are applied to the contracts of the government."

The same principle has been repeatedly decided by this court.

In *United States vs. Smoot*, 15 Wall., 36 (21 Law. Ed., 107), the court held that it will not apply to contracts made by the government, nor give to its action under said contracts a construction and effect different from those which courts of justice apply to contracts between individuals.

In *United States vs. Bostwick*, 94 U. S., 66 (24 Law. Ed., 65), which was a case construing a lease between an individual and the United States, and determining the rights of landlord and tenant, Chief Justice Waite, in delivering the opinion of the court, says: "The United States when they contract with their citizens are controlled by the same laws that govern the citizen in that behalf."

In *United States vs. Smith*, 94 U. S., 217 (24 Law. Ed., 115), Chief Justice Waite in delivering the opinion of the court, says:

And in *Smoot's case*, 15 Wall., 47, that the principles which govern inquiries as to the conduct of individuals with respect to their contracts are equally applicable where the United States are a party. The same rules were applied in the the case of *Manufacturing Company*, 17 Wall., 592."

In *United States vs. Bank of Metropolis*, 15 Peters, 392 (10 Law. Ed., 779), the court, in passing upon the liability of the United States for acceptances of the Post Office Department of the drafts of mail contractors, says:

"When the United States by its authorized officer become a party to negotiable paper, they have all the rights and incur all the responsibility of individuals who are parties to such instruments. We know of no difference, except that the United States cannot be sued."

As to the liability of the United States upon negotiable paper, a number of other cases might be cited.

When the United States has deposed its sovereignty as a contractor, the mere fact that they are a party will not give the court the right to review the decision of the State court.

C. J. Waite in delivering the opinion of the court in *United States vs. Thompson*, 93 U. S. (23 Law. Ed., 982):

"Judgments in the State courts against the United States cannot be brought here for re-examination upon a writ of error except in cases where the same relief would be afforded to private parties." This case, so far as known, has never been questioned or limited in any subsequent case where the United States has voluntarily submitted themselves to the jurisdiction of the court. In the case of *Stanley vs. Schwalby*, 162 U. S. 278, which was an action of trespass to try title against certain individuals claiming to hold title under the United States, and the United States intervenes to protect its property, the court says of *United States vs. Thompson*: "This dictum in so general a form is in danger of misleading; and it went beyond anything required by the decision in that case," etc.

In the *Thompson* case, the United States are the plaintiff, the actor. In the case of *Stanley vs. Schwalby*, the United States was compelled to intervene to protect its own property. The first case announced the correct principle of law under its facts, the last under the facts in that case.

It will be noted that in case at bar there is not drawn in question the validity of any treaty or statute of the United States. The right of the government is contractual merely, and it relates to the title to property or to a collateral security for a debt. Can it be maintained that when the government enters into a contract and thereby deposes, as to the matter of the contract, its constitutional authority and exchanges the character of sovereign for that of an individual contractor that it can still invoke any right or immunity that concerns it as a sovereign or any right given it under the Federal Constitution? Can it lay aside its sovereignty and still claim its im-

munities and privileges? It would seem that the statement that it had deposed its constitutional authority asserts with equal force that it can, in that connection, no longer claim the privileges and immunities of a sovereign.

In delivering the opinion of the court in *Sawyer vs. Piper*, 189 U. S., 154 (47 Law. Ed., 757), Mr. Justice Brewer uses this language:

"While they thus asserted the existence of a Federal question, yet it is well settled that the mere averment of such a question is not sufficient. As said in *Hamblin vs. Western Land Co.*, 147 U. S., 531, 532, 37 L. ed., 268, 13 Sup. Ct. Rep., 333, 354:

"A real, and not a fictitious, Federal question is essential to the jurisdiction of this court over the judgments of State courts. *Millingar vs. Hartupee*, 6 Wall., 258, 18 L. ed., 829; *New Orleans vs. New Orleans Water Works Co.*, 142 U. S., 79, 87, 35 L. ed., 943, 946, 12 Sup. Ct. Rep., 142, 145. In the latter case it was said that "the bare averment of a Federal question is not, in all cases, sufficient. It must not be wholly without foundation. There must be at least color of ground for such an averment; otherwise a Federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay"

"See also *Wilson vs. North Carolina*, 169 U. S., 586; *St. Joseph & G. I. R. Co. vs. Steele*, 167 U. S., 659; *New Orleans Water Works Co. vs. Louisiana*, 185 U. S., 336."

It is not denied that a right, privilege or immunity of the United States is alleged in the assignments of error. Nor is it denied that it is alleged in the assignments of error that the validity of the supply lien statute of Virginia as interpreted is

repugnant to the Constitution and laws of the United States because in irreconcilable antagonism to the sovereign authority which it was the purpose of the Federal Constitution to establish. It is admitted that these allegations are made.

It is denied, however, that any such right, privilege or immunity exists. When the United States voluntarily depose their sovereignty and all their rights, privileges and immunities as such by entering into contracts with a Virginia corporation, these rights, privileges and immunities belonging to them only as a sovereign do not and cannot exist when they have ceased to act as such.

It is denied that the supply lien statute of Virginia is repugnant to the Constitution and laws of the United States or in irreconcilable antagonism to the sovereign authority which it was the purpose of the Federal Constitution to establish when, as in this case, the United States depose their sovereignty and enter into contracts with a Virginia corporation.

This is well illustrated by the case of *Millengar vs. Har- tupee*, 6 Wall., 258 (18 L. ed., 829). This was a case of garnishment in a State court, and the controversy related to the ownership of certain cotton captured for breach of blockade and libeled as a prize. This cotton, before the hearing of the prize cause, had been released by order of the court, with the consent of the district attorney. The question was whether the order of the district court releasing the cotton vested the title in Millengar, and the decision was that it did not. Millengar was claiming title under the order of release of the prize court, but the authority of the court was not drawn in question. In discussing this question, Chief Justice Chase says:

“Something more than a bare assertion of such authority seems essential to the jurisdiction of this court. The authority intended by the Act is one having a real existence derived from competent governmental power. If a different construction had been intended Congress

would doubtless have used fitting words. The Act would have given jurisdiction in cases of decisions against claims of authority under the United States."

Again:

"In many cases the question of the existence of an authority is so closely connected with the question of its validity that the court will not undertake to separate them, and in such cases the question of jurisdiction will not be considered apart from the question upon the merits, or except upon hearing in regular order. But, where, as in this case, the single question is not of the validity but of the existence of an authority, and we are fully satisfied that there was, and could have been, no decision in the State court against any authority under the United States existing in fact, and that we have, therefore, no jurisdiction of the cause brought here by writ of error, we can perceive no reason for retaining it on the docket."

In the case at bar it is submitted that if the United States when they enter into a contract do depose their sovereignty and their rights, privileges and immunities as such, there is no Federal question in this case and this court has no right to review the decision of the Supreme Court of Appeals of Virginia. If, on the other hand, the United States when they enter into a contract do not depose their sovereignty and their rights, privileges and immunities as such, then this court has the right to review the decision of the Supreme Court of Appeals of Virginia.

We will not enquire what would be the consequences of an act of Congress creating a lien in favor of the United States for advances made on vessels being built for the government or any of the departments thereof on said vessels, because Congress has not enacted any such law. It has been content to let the

matter remain as it is, controlled by the local laws, and especially subject to State statutes for the protection of those who furnish labor and materials. If such a statute had been enacted by Congress a very different question would have been presented.

The eighth clause of the contract for the "Benyuard" (printed Record, page 408), is as follows:

"8. The party of the second part shall be responsible for and pay all liabilities incurred in the prosecution of the work for labor and material."

There is no provision of this sort in the contract for the "Mohawk", but a penal bond is taken from the Trigg Company, with the Virginia Trust Company as security, one of the conditions of which is as follows:

"and shall promptly make payments to all persons supplying said contractors labor and materials in the prosecution of the work provided for in said contract."
(Printed Record, page 285.)

The sixth clause of the contract for the "Galveston" (printed Record, page 239) is as follows:

"6. When a payment is to be made under this contract, as a condition precedent thereto the Secretary of the Navy may in his discretion require, for the protection of the party of the second part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights *in rem* of any kind against said vessel, or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired, for or on account of any work done or any machinery, fittings, equipment, or material already incorporated as a part of said vessel, or on hand for that purpose, or that such liens or rights

have either been released absolutely or so subordinated to the rights of the Government as to make its lien for all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel."

It is perfectly clear from these provisions that the United States, at the time they entered into these contracts, recognized that they stood in the same position as an individual contractor and were liable to the State law and undertook to protect themselves against liens acquired thereunder. This seems to be a practical admission of the soundness of the proposition contended for.

Now apply these principles to the facts in this case. The United States have deposed their constitutional authority and have the same rights and obligations as an individual. Notwithstanding that by their act they have divested themselves of their rights and privileges, they claim that they still exist and invoke them for the purpose of giving jurisdiction to this court to review a decision of the Supreme Court of Appeals of Virginia. It is maintained that this does not raise a real Federal question. The alleged Federal question is wholly without foundation and there is no color of ground for such an averment.

It is maintained therefore that as to the first five assignments of error there is no Federal question, and the decision of the Virginia court cannot be reviewed by this court.

We will now examine the terms of certain of the assignments of error to ascertain whether there is anything in them which gives to this court the right to review the decision of the Supreme Court of Appeals of Virginia.

We will not here consider the first assignment of error nor the third assignment of error (b) which merely raise the question as to the title to the "Benyard" and the "Galveston."

We will, however, consider the following assignments: II., IIIa, IV., and V.

The second assignment of error is as follows:

"II.

That the said Supreme Court of Appeals of Virginia erred in holding and deciding that the lien in favor of the United States upon the revenue cutter "Mohawk," and the materials on hand for use in her construction, for all moneys advanced on account thereof, which lien was reserved in a certain written contract, dated April 20, 1900, was not paramount to the claims of the supply creditors, and of all other creditors, of the said William R. Trigg Company, said lien, right or privilege having been specially set up and claimed on behalf of the United

States as a paramount lien under an authority exercised under the United States, to-wit, the said contract of April 20, 1900, between the said William R. Trigg Company, party of the first part, and L. J. Gage, the then Secretary of the Treasury of the United States, representing the United States, party of the second part, said contract being authorized by the laws of the United States, and the said lien, right, or privilege having been reserved to the United States in said contract in conformity to the express provisions of the joint resolution of Congress, approved May 5, 1894, 'providing for partial payments for work, and so forth, for vessels constructed under the direction of the Secretary of the Treasury.' 28 Stat., 582-3."

The supply lien law of Virginia referred to in this assignment is as follows (Code of Virginia, 1894, Sec. 2485 and 2486):

"Sec. 2485. Lien of employees, and so forth, of transportation companies, and so forth, on franchises and property of company."

All conductors, brakemen, engine drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, storekeepers, mechanics, traveling representatives, or laborers, and all persons furnishing railroad iron, engines, cars, fuel, and all other supplies necessary to the operation of any railway, canal, or other transportation company, and all clerks, mechanics, traveling representatives, and laborers who furnish their services or labor to any mining or manufacturing company, whether such railway, canal, or other transportation or mining or manufacturing company be chartered under or by the laws of this State, or be chartered elsewhere, and be doing business within the limits of this State, shall have a prior lien on the franchises, gross earnings, and on all the real and personal property of said company which is used in operating the same to the extent of the moneys due them by said company for such wages or supplies; and no mortgage, deed of trust, sale, hypothecation, or conveyance executed since the twenty-first day of March, eighteen hundred and seventy-seven, shall defeat or take precedence over said lien; provided, however, that the lien secured by this provision to parties furnishing supplies shall be subsequent to that due to clerks, mechanics and laborers, for services furnished as aforesaid; and provided that if any person entitled to a lien as well under Section 2474, as under this section shall perfect his lien given by either section, he shall not be entitled to the benefit of the other: and provided, also, that no right to or remedy upon a lien which has already accrued to any person shall be extended, abridged, or otherwise affected hereby.

Sec. 2486. How perfected; how enforced.

No person shall be entitled to the lien given by the preceding section unless he shall, within ninety days after the last item of his bill becomes due and payable for which such supplies are furnished or service rendered, file in the clerk's office of the court of the county or corporation in which is located the chief office in this state of the company against which the claim is, or in the clerk's office of the Chancery Court of the city of Richmond when such office is in said city, a memorandum of the amount and consideration of his claim, verified by affidavit, which memorandum the said clerk shall forthwith record in the deed book, and index the same in the name of the said claimant and also in the name of the company against which the claim is. Any such lien may be enforced in a court of equity."

The language of this assignment is peculiar. It says the lien of the United States was specially "set up and claimed on behalf of the United States as a paramount lien under an authority exercised under the United States, to-wit, the said contract of April 20, 1900," etc.

This language does not show that there has been drawn in question the validity of a treaty or statute of or an authority exercised under the United States. By this assignment the United States claim certain rights under this contract which they have entered into and which must be construed as the contract of an individual and as to which they have deposed their constitutional authority. The validity of no treaty nor statute of the United States is drawn in question nor any authority exercised under the United States by virtue of any treaty or statute.

This assignment further alleges that "the said lien, right or privilege having been reserved to the United States in said contract in conformity to the express provisions of the joint resolution of Congress, approved May 5, 1894, 'provid-

ing for partial payments for work, and so forth, for vessels constructed under the direction of the Secretary of the Treasury' ”.

This joint resolution is as follows:

“That the Secretary of the Treasury be, and he hereby is authorized, to make partial payments from time to time upon existing contracts and all contracts hereafter made for the construction of vessels for the Treasury Department, but not in excess of seventy-five per cent. of the amount of the value of the work already done; and that the contracts hereafter made shall provide for a lien upon such vessels for all advances so made; provided that nothing in this joint resolution shall be construed to hereafter authorize any partial payments except on contracts stipulating for the same and then only in accordance with such contract stipulations.”
28 Stat. at Large, 582, 583.

This joint resolution it is claimed gives a statutory lien.

It is admitted that possession is not necessary to a statutory lien, and, therefore, the only question is whether the joint resolution confers such a lien or not. We do not think it does, for two reasons:

(a) Joint resolution and not an act was used. Joint resolutions are chiefly for administrative purposes of a local or temporary character. They are intended as rules for the government of public officers, and not laws to govern the public. A joint resolution is

“a form of legislation which is in frequent use in this country, chiefly for administrative purposes of a local or temporary character.” Cushing Law Legislative Assemblies, Sec. 2403.

The statute on its face shows that it is a direction to the Secretary of the Treasury in the administration of his department. The same author, in the same section, says that in the Congress of the United States that a joint resolution is

“put upon the same footing and made subject to the same regulations, with bills properly so called. . . .
In Congress a joint resolution is regarded as a bill.”

It is true that the Constitution of the United States, Article I., Sec. 7, Clause 3, requires that every resolution to which the concurrence of the Senate and House of Representatives may be necessary shall be presented to the President of the United States and approved by him, or passed over his veto, just as is provided in the preceding clause as to bills.

This, however, does not change the character of a joint resolution which is intended as a rule for the government of public officers, and not as a law to govern the public.

(b) The joint resolution does not create a lien. It directs the Secretary of the Treasury to reserve the lien. It might have said “the United States shall have a lien for all advancements,” but this it refrained from doing, purposely it would seem. Instead, it tells a public officer, in making a contract, to reserve a lien. In so doing it clearly contemplates a contractual and not a *statutory* lien. This and other grounds readily distinguish this from the *United States vs. Snyder*, 149 U. S. 210. That a contractual lien was intended appears from the fact that payments are expressly allowed on contracts theretofore made on which no lien is reserved, and for which no lien is created. The character, operation and extent of a statutory lien must be ascertained by the terms of the statute creating and defining it. 1st Jones on Liens, Sec. 105. It is equally true that the existence of the lien also, must be ascertained by the terms of the statute, and the terms of the statute here clearly show that there is no such statutory lien.

The United States can claim no right nor authority under a statute which gives none.

Attention is further called to the fact that this joint resolution, by its terms, is limited to vessels for the Treasury Department and, therefore, it cannot be claimed that it applies to any except the "Mohawk."

Nor is the validity of this joint resolution drawn in question by the decision of the Supreme Court of Appeals of Virginia. By its decision it determines the legal consequences under the laws of Virginia of a failure to record this contract by the United States who have deposed their sovereignty and stand upon the same footing as an individual contractor. If the United States had had this contract recorded as provided by the statutes of Virginia, the lien directed by the joint resolution to be reserved by the Secretary of the Treasury would have been effective and would have protected the Government.

Section 2465 of the *Code of Virginia*, 1904, is as follows:

"Sec. 2465. Contracts, deeds, and so forth, that are void as to creditors and purchasers unless recorded.

Every such contract in writing and every deed conveying any such estate or term, and every deed or gift, or deed of trust, or mortgage conveying real estate or goods and chattels, and every bill of sale or contract for the sale of goods and chattels when the possession is allowed to remain with the grantor (and any such bill of sale or contract shall be in writing and signed by the vendor) shall be void as to subsequent purchasers for valuable consideration without notice, and creditors, until and except from the time that it is duly admitted to record in the county or corporation wherein the property embraced in such contract, deed, or bill of sale may be; provided, that the possession of any such estate or term, without notice of other evidence of title, shall not be notice to said subsequent purchasers for valuable consideration."

There is no difference between the second assignment of error and IIIa, except that in the last there is no reference to the joint resolution and it alleges that the contract for the Galveston, dated December 14, 1899, was "authorized by the laws of the United States and especially by the act entitled 'An act making appropriations for the naval service for the fiscal year ending June 30, 1900, and for other purposes,' approved March 3, 1899."

It will be noted that nowhere in the decision of the Supreme Court of Appeals of Virginia is the validity of this act drawn in question, or of any authority under it.

The fourth assignment of error alleges that the Supreme Court of Appeals of Virginia erred in deciding against the immunity of the United States claimed under the Constitution and holding that their rights in the three vessels were subject to the supply lien statute of Virginia because as a sovereign they are not subject to the operation of the statute and consequently that the contracts were not made with reference to the State statute even if the Legislature of Virginia intended to embrace in its terms the contracts of the United States.

It is maintained that this is not error; that this is not a matter reviewable by this court because when the United States have deposed their sovereignty they cannot claim the privileges and immunities of a sovereign.

Furthermore, the United States were contracting with a corporation of the State of Virginia, whose powers were derived from the State and whose disabilities were fixed by the State. The government as a contractor, therefore, necessarily derives its rights from the ultimate source of such rights, namely, the State statutes.

This principle is well illustrated in *United States vs. Illinois Central R. R. Co.*, 154 U. S., 225 (38 L. Ed. 971):

"Under the operation of the act of the Legislature of Illinois of February 27, 1833, for the making and

recording of town plats, the interest in the control of the United States over the streets, alleys, and commons in the Fort Dearborn addition to Chicago ceased with the record of the plat thereof and the sale of the adjoining lots.

When a resort is made by individuals, or by the government of the United States to the mode provided by the statute of a State, where real property is situated, for the transfer of its title, the effect and conditions prescribed by the statute will apply, and such operation will be given to the instrument of conveyance as is there designated."

Although it is admitted that the general rule is that the sovereign is not bound by acts of the legislative body, unless specially named, it is maintained that this is one of the exceptions, and that the United States is bound by the terms and provisions of Section 2465 of *Code of Virginia*, 1904. For discussion of this question, see opinion of Mr. Justice Matthews in *Fink vs. O'Neil*, 106 U. S. 275 (L. Ed.).

This principle applies in the case at bar and establishes that in the acquisition of the title to the vessels, the United States are governed by the State statutes.

The fifth assignment of error is because the Supreme Court of Appeals of Virginia erred in holding that the supply lien law was operative so far as the rights and interests of the United States to the three vessels is concerned because the "said statute so interpreted is in conflict with the fundamental principle that the States have no power to retard, impede, burden, or in any manner control, or interfere with the operations of the Federal Government, since such power would be in irreconcilable antagonism to the sovereign authority which it was the purpose of the Federal Constitution to ordain and establish."

This assignment attempts to bring this case within the third class of cases embraced in the 25th section of the judiciary act as amended, and alleges that the supply lien law of Virginia thus interpreted would be "to retard, impede, burden or . . . control or interfere with the operations of the Federal Government."

Can this position be maintained? It cannot be that when the United States voluntarily depose their sovereignty and enter into a contract with a corporation created by the State that it will retard, impede or burden them to hold that they contract as an individual and have none of the immunities or privileges of sovereignty which they have voluntarily given up.

There is no question that the powers given to the Supreme Court by the 25th section of the judiciary act as amended, were intended to protect the general government in the free and uninterrupted exercise of the powers conferred on it by the Constitution and to prevent any serious impediment from being thrown in its way while acting in the sphere of its legitimate authority.

But this principle is not applicable to the facts in this case. The facts of the cases which establish the principle are very different from the facts in this case.

The case of *McCulloch vs. Maryland*, 4 Wheat., 316 (4 L. Ed. 579) it will, of course be recalled involves the question as to whether Congress had the power to incorporate a bank.

Mr. Justice Brown, in delivering the opinion of the court in *Missouri vs. Andriano*, 138 U. S. 407 (34 L. Ed. 1013), says:

"The object of the present judiciary act was not to give a right of review, wherever the validity of an act of Congress was drawn in question, but to prevent the courts of the several States from impairing or frittering away the authority of the Federal Government by giving a construction to its statutes adverse to such authority. Of course, if the construction given by the

State court to the act under which the right is claimed be favorable to such right, no such reason exists for a review by this court. As stated by Chief Justice Taney in *Commonwealth Bank vs. Griffith*, 39 U. S. 14 Pet. 56, 58, the power given to the Supreme Court by this act of Congress was intended to protect the general government in the free and uninterrupted exercise of the powers conferred on it by the Constitution and to prevent any serious impediment from being thrown in its way while acting within the sphere of its legitimate authority. The right was therefore given to this court to re-examine the judgments of the State courts, where the relative powers of the general and State government had been in controversy, and the decision had been in favor of the latter'".

The *Andriano case* was a proceeding in the Missouri court to try the respective titles of two claimants to the office of sheriff, one party claiming that the other's election was void under the Constitution of Missouri because the party was not a citizen of the United States. That party admitted his foreign birth, but contended that his father had been naturalized under the United States statutes, and he thereby became a citizen; the State court having decided that he was a citizen, there was no adverse decision of the United States laws that could be reviewed by this court.

The case of *Commonwealth Bank vs. Griffith*, 14 Pet., 56 (10 L. ed., 352), was an action brought in the State court of Missouri to recover the amount due on a promissory note. The defendants pleaded that the note sued on was made in consideration of the paper of the said Bank of the Commonwealth, and that the said paper was bills of credit within the meaning of the Constitution of the United States issued on the credit of the State. The Circuit Court overruled this plea and gave judgment for the plaintiff. This decision was reversed by the

Supreme Court of the State. It was held that this court could not review the decision of that court because its decision was in favor of the Federal right.

It seems clear that the principles announced as applicable to the facts in these cases cannot be applied to the facts in the case at bar.

The same principle gives this court the right to review the decisions of the State courts, where they are adverse to a right claimed under an order of a Federal court.

II.

If, however, this court should deem it proper to review the decision of the Supreme Court of Appeals of Virginia, it is maintained that there is no error in the decision of that court in any of the questions decided by it, and certainly in none of the alleged Federal questions, and that therefore it should be affirmed.

The decisions of this court clearly establish that upon cases brought before this court from the court of last resort of the State, it will not examine into the whole case, but only into the Federal questions presented.

In *Montgomery vs. Hernandez*, 12 Wheat., 129 (6 Law. ed., 575), in discussing the 25th section of the judiciary act, the court uses this language:

“Under these provisions we have no authority to re-examine the whole case. We can examine so much and such parts of it only as come within some one or other of the classes of questions enumerated in the act of Congress and so much of the case as must necessarily be decided to arrive at such questions.”

In *Murdock vs. Memphis*, 20 Wall., 590 (22 Law. ed., 429), Mr. Justice Miller delivers the opinion of the court and dis-

cusses exhaustively the 25th section of the judiciary act as amended by the act of February 5, 1867, and what questions will be considered by this court upon an appeal from a decision of a State court and announces the conclusion of the court in this language:

"We are of opinion that upon a fair construction of the whole language of the section the jurisdiction conferred is limited to the decision of the questions mentioned in the statute and, as a necessary consequence of this, to the exercise of such powers as may be necessary to cause the judgment in that decision to be respected."

It will be recalled that the United States are the plaintiffs in this proceeding, that they voluntarily intervened in this suit and claim the title to or a lien on property in the possession of the William R. Trigg Company, or of a receiver of the Virginia court for the benefit of itself or its creditors. The stipulation filed by the government for the discharge of the "Galveston" (and the other stipulations are substantially the same) recites:

"WHEREAS, such creditors, or some of them, now claim and assert some right, title, or interest in and to the property of the United States, and in which the United States has a claim and interest, to-wit: the protected cruiser 'Galveston' in its unfinished condition, and the supplies and materials on hand and applicable thereto, as shown by said inventory Exhibit 'B.' And

"WHEREAS, the United States is desirous of protecting any and all such creditors in any claims, demands or liens, which they, or any of them, may have in and to said property or any part thereof, provided it should ultimately be determined that such creditors, or any of

them, hold any liens, claims or demands against said property which are prior to and superior to the rights of the United States in and to said property." (Printed Record, 227.)

Though the Government took possession of the ship, this case, according to the express provisions of the statute, (U. S. Revised Statutes Sec. 3754) is to be decided as if the possession of the Trigg Company had never been interrupted. The language of the statute is "and shall entitle such person as against the United States to such rights as he would have had in case possession of such property had not been changed."

The purpose of the statute and the stipulation is plainly expressed in each, it was to waive sovereignty and invite the courts to declare the law.

In the face of this statute and the stipulations, counsel for the Government has no warrant of attorney to insist upon a sovereignty which his client, powerful but just, has waived.

It is not denied, of course, that direct suits cannot be maintained against the United States or their property, but it is maintained that when they institute a suit they waive their exemption and stand in such proceedings with reference to the rights of defendants or claimants precisely as private suitors, except that they are exempt from costs or affirmative relief against them beyond the demand or property in controversy.

It makes no difference whether you have a lien or not upon property belonging to the United States and in their possession, you can take no steps to enforce it, because you can not sue the United States nor institute proceedings *in rem* against their property. The principle may be well illustrated by a mortgage executed upon property, real or personal, by an individual at that time the owner of the property and in possession of it. There is no question that under these circumstances the owner of the debt secured by the mortgage may enforce the mortgage

and have a sale of the property in order to collect the debt. But if, before this is done, the United States acquire the title to and obtain the possession of the property covered by the mortgage, then the creditor can take no steps to collect his debt by enforcing the lien of the mortgage, although the lien continues to exist, because the United States and their property are exempt from suit. If, however, the United States come into court themselves, as to this property, and ask for its sale and the proceeds of the sale, by the voluntary act of the United States, become subject to the jurisdiction of the court, that court will enforce the lien of the mortgage upon the property, although the property is owned by and in the possession of the United States.

Rights may exist as to the United States or their property, but they are not enforceable, because the United States are exempt from suit, unless they seek the aid of the courts, but when they seek the aid of the courts they waive their exemption and stand precisely as private suitors, except as to costs and affirmative relief not beyond the demand or property in controversy.

This distinction is clearly drawn by the courts of Massachusetts in the case of *Briggs vs. A Light Boat*. This case was twice before that court, and will be found reported in 7 Allen, 287, and 11 Allen, 157, respectively.

Mr. Justice Miller, in delivering the opinion of the court in "*The Davis*" *infra*, says: Perhaps the two most authoritative and well considered cases on that subject are '*The Siren*' and *Briggs vs. The Light Boats*, 11 Allen, 157.

When first before the Massachusetts court, it held that, as to the three light vessels, which were being built for the United States, no title passes, until their completion and delivery, and that a lien exists and may be enforced in favor of one who furnished timber to the builder under the statute of Massachusetts creating a lien therefor in such cases.

When this case again came before the court, reported in 11 Allen, 157, says Gray, J., in delivering the opinion of the court:

"The question which has now been argued is not of the petitioner's title, but the mode of asserting it; not of right, but of remedy. The United States do not now deny that they took their title subject to the lien of the petitioners. That point was determined by this court, after full consideration, upon the former argument of one of these cases. *Briggs vs. Light Boat*, 7 Allen, 287. See also *Vanderwater vs. Mills*, 19 How., 89, 90.

"At that argument, the attention of counsel was chiefly, and of the court exclusively, directed to the question of title; it was assumed by the court that the lien carried with it the right to maintain this process; the effect of the possession of the United States upon the possibility of enforcing the lien in this form of proceeding, although involved in the ruling which the superior court had made at the trial, was not considered; and it was by *inadvertence*, that, following the terms of the report on which the case had been reserved, the court, upon setting aside the verdict for the respondents, directed judgment for the petitioners, and referred the case to an assessor to ascertain and report the amount of the petitioner's claim."

The court then proceeds to hold that although the United States do not deny that they took title, subject to the lien, it cannot be enforced because the property is in the possession of the United States and they cannot be sued. The court proceeds, however, to lay down the proposition that if this suit had been instituted before the United States obtained possession of the vessels the lien could and would have been enforced. Says the opinion (p. 163):

"Nor is this case like one in which the government has, by bringing a civil action to enforce its own rights to property in the possession of an individual, submitted itself to the jurisdiction of the court, and, being itself the actor, needs the assistance of the court to recover its property."

Again on page 164:

"If they had filed their petitions and attached the vessels before these came into possession of the United States, they might well have contended that the courts of the Commonwealth had acquired a jurisdiction of the cases, which could not be divested until the object of the suits was accomplished."

Again on page 182:

"In *The St. Jago de Cuba*, 9 Wheat., 409, and *United States vs. Wilder*, 3 Sumner, 308, the United States were not defendants, but plaintiffs, and therefore, upon the plainest principles of justice and the well settled rules of law, could not obtain the property in controversy without paying off the liens set up in defence. 2 *Spence on Eq.*, 32, 33, 774. *Sewall vs. Lee*, 9 Mass., 368. Their position resembled that of the crown in the English revenue cases above cited.

The case of *The St. Jago de Cuba* arose upon an information to enforce the forfeiture of a ship for violation of the acts of Congress prohibiting the slave trade; and the point decided was, that claims of seamen and material men for services performed and supplies furnished in good faith after the criminal act and before the filing of the information must be first paid out of the proceeds in the registry.

The case of *United States vs. Wilder*, on which the petitioners much rely, was an action of trover, brought by the United States against the owners of a vessel, which had met with a disaster the subject of general average, to recover clothing on board belonging to the United States, without paying a contribution to the average. The clothing was not in the possession of the United States, and no suit in which the United States were a party defendant at law or equity, or claimant in admiralty, had been brought either *in personam* or *in rem*. 'The sole question', as stated by Mr. Justice Story at the outset of his opinion, was, 'whether there exists a right of lien for the general average due on the goods belonging to the United States, under the circumstances stated by the parties.' And it was decided that the owners of the ship, whose duty it was to adjust the general average, were not bound, without receiving a contribution to the average loss, to surrender the clothing to the United States, and thus postpone the whole adjustment until after an opportunity to apply to Congress."

These principles are as applicable to the case here under consideration as to that case and establish the correctness of the decision of the Supreme Court of Appeals of Virginia. The William R. Trigg Company, or its receiver, was in possession of the property to which the United States claimed title or upon which they claimed a lien. It became necessary for them to intervene in the suit and assert their rights against this property, thus waiving their exemption from suit. When they come into the Virginia court under such circumstances they stand upon identically the same footing and are governed by the same laws as an individual, except as to costs and the limitation, upon affirmative relief against them, to the amount of the property involved. These principles are stated in the opinion of Judge Cardwell (P. R., 389) in the following language:

"It has been well settled that every contract must be considered as made with reference to the existing laws, by which its performance may be governed.

In *United States vs. Quincy*, 4 Wall., 535, the opinion says: 'It is also settled that the laws which subsist at the time and place of the making of a contract and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated into its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement.'

In the latter case, *Walker vs. Whitehead*, 16 Wall., 214, the above statement was repeated, and the opinion said: 'These propositions may be considered consequent axioms in our jurisprudence.'

Again in *United States vs. Bostwick*, 94 U. S., 66, the opinion by Waite, C. J., said: 'The United States, when they contract with their citizens, are controlled by the same laws that govern the citizens in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them.'

The fact that the government at the time it entered into these contracts recognized that they contracted with reference to local laws, and especially with reference to the labor and supply statute of Virginia, is evidenced by provisions in the contracts for their protection.

These principles are well established by other decisions of this court. They will be found clearly set forth in the opinion of the court in the following cases:

The Siren, 7 Wall., 159 (19 L. ed., 129):

"But although direct suits cannot be maintained against the United States, nor against their property,

2 yet, when the United States institute a suit, they waive their exemption so far as to allow a presentation by the defendant of set-offs, legal and equitable, to the extent of the demand made or property claimed, and when they proceed *in rem*, they open to consideration all claims and equities in regard to the property libeled. They then stand in such proceedings, with reference to the rights of defendants or claimants, precisely as private suitors, except that they are exempt from costs and from affirmative relief against them, beyond the demand or property in controversy."

Again:

"So, if the property belonging to the government, upon which claims exist, is sold upon judicial decree, and the proceeds are paid into the registry, the court would have jurisdiction to direct the claims to be satisfied out of them. Such decree of sale could only be made upon application by the government, and by its appearance in court, as we have already said, it waives its exemption and submits to the application of the same principles by which justice is administered between private suitors."

The Davis, 10 Wall., 17 (19 L. ed., 875).

In this case was involved property of the United States on board of a vessel which was seized by the marshal before it came into the actual possession of any officer of the United States, and it was subjected to a lien for salvage against the objection of the United States. The court, in its opinion, said:

"The United States without any violation of the law by the marshal was reduced to the necessity of becoming claimant and actor in the court to assert her

claim to the cotton. Under these circumstances, we think it was the duty of the court to enforce the lien of the libelants for the salvage before it restored the cotton to the custody of the officers of the government."

Mr. Justice Bradley, in delivering the opinion of the court in *Carr vs. United States*, 98 U. S., p. 438 (25 L. ed., 209), says:

"The cases like 'The Siren' and 'The Davis', already referred to, and many others therein cited, in which the proceeds of government, property, incidentally brought into the admiralty, have been subjected to the liens of claimants against the same, stand upon the principle that when the government itself seeks its rights at the hands of the court, equity requires that the rights of other parties interested in the subject-matter should be protected. The 'Siren' was brought into the port of Boston as prize, was libeled, condemned, and sold, and the proceeds paid into court. In distributing these proceeds amongst those who had claims against the vessel, an allowance was awarded for damages to the owner of another vessel which had been sunk by collision with the 'Siren' during her voyage subsequent to the capture. It was held that, inasmuch as the United States had resorted to the aid of the court to procure the condemnation of the 'Siren,' and had thus placed her proceeds in the course of judicial administration, any proper claims against the vessel itself, prior to that of the government, might well be satisfied out of such proceeds. At the same time, it was conceded that neither the government nor its property can be subjected to direct legal proceedings without its consent; and that whosoever would institute such proceedings must bring his case within the authority of some act of Congress. 7 Wall., 154.

The 'Davis' and her cargo were seized for salvage services. Part of the cargo was cotton belonging to the United States, but not in its actual possession, it being in the possession of the master of the ship under a contract of affreightment. The government appeared as claimant; and it was held that the cotton, like other cargo, was justly liable to pay its proportion of the salvage services; the court, at the same time, as before stated, holding that even for salvage services the property of the government could not be taken out of its own possession by any direct proceeding."

Judge Crosscup, in delivering the opinion of the Circuit Court of Appeals for the 7th Judicial Circuit, in the case of *United States vs. Stimson*, 125 Fed., 907, and when holding that the substantial considerations underlying the doctrine of estoppel applied to the government as well as individuals, says:

"But when the government seeks its rights at the hands of a court, equity requires that the rights of others as well should be protected. *Carr vs. United States*, 98 U. S. 438."

In *Walker vs. United States*, 139 Fed., 413, Judge Jones, after quoting from *The Davis* and *The Siren*, uses this language:

"The underlying principle of all the decisions is that, when the sovereign comes into court to assert a pecuniary demand against the citizen, the court has authority, and is under duty, to withhold relief to the sovereign, except upon terms which do justice to the citizen or subject, as determined by the jurisprudence of the forum in like subject-matter between man and man. The acts or omissions of its officers, if they be authorized to bind the United States or to shape its course of conduct as to a

particular transaction, and they have acted within the purview of their authority, may in a proper case work an estoppel against the government. *Lindsay vs. Hawes*, 2 Black 560, 17 L. Ed. 365; *Davis vs. Gray*, 16 Wall. 203, 21 L. Ed. 447; *U. S. vs. Bank of Metropolis*, 15 Pet. 392, 10 L. Ed. 774; *Sinking Fund Cases*, 99 U. S. 719, 25 L. Ed. 495; *U. S. vs. Barker*, 12 Wheat 559, 6 L. Ed. 728; *Cooke vs. U. S.*, 91 U. S. 398, 23 L. Ed. 237; *Duval vs. U. S.*, 25 Ct. Cl. 60; *Hartson vs. U. S.*, 21 Ct. Cl. 456."

In the case at bar the sovereign comes into court and asserts a title to personal property or a lien thereon and thereby submits itself to the same principles by which justice is administered between private suitors in the courts of the State of Virginia. There is no question that under the Virginia law and in the Virginia courts this property claimed by an individual would be subject to the supply lien statute of Virginia above quoted and that the lien of the United States upon the "Mohawk" and the "Galveston" not having been recorded would be subject to the recordation laws of the State of Virginia and therefore void as to purchasers and creditors.

It has been established by a long line of decisions that the United States do not possess any general right of priority or privilege over private creditors for the satisfaction of debts due to them founded upon general prerogatives belonging to the government in its sovereign capacity. Such priority or privilege must be founded upon some statute passed by Congress. This proposition is thus stated by Judge Cardwell in his opinion (P. R. 400):

"In *United States vs. Canal Bank*, Fed. Case No. 14, 715; 25 Fed. Case 378, the opinion says: 'It has long been settled, by the solemn adjudication of the Supreme Court, that the United States do not possess

any general right of priority or privilege over private creditors for the satisfaction of the debts due to them, founded upon any general prerogative belonging to the Government in its sovereign capacity; but that all the priority or privilege which the Government is at liberty to assert is or must be found upon some statute, passed by Congress in virtue of its constitutional authority."

This proposition is sustained by a long list of authorities cited in the opinion.

This principle applied to this case made it impossible for the Supreme Court of Appeals of Virginia to have reached any other conclusion than that stated in the opinion of the court on page 400, printed record, in these words: "In view of the authorities cited, and for the reasons given in the discussion of the cases of the 'Benyuard' and the 'Mohawk,' as well as this case of the 'Galveston,' we are of opinion that the supply liens of appellants in each of these cases are superior to any claim of right in the government to the vessels or lien thereon reserved in its said contracts, and to the claims of the general creditors of the Trigg Co., as they may be established in this cause."

Again we maintain that the government is bound by Section 2465 of the Code of Virginia requiring contracts such as those involved in this case to be recorded just as an individual is and adopt the argument in the petition for an appeal to the Supreme Court of Appeals of Virginia, on the ninth assignment of error therein (printed record, page 15), as if the same were here repeated. It is maintained that under the argument there made and the authorities cited to sustain it that the sovereign, even at common law, is bound by the recording statutes even though the particular statute might work a divesture of the sovereign, such statutes being intended to prevent fraud and deceit operating to the injury of creditors and subsequent purchasers.

III.

It is admitted that the sixth assignment of error which alleges that the Supreme Court of Appeals of Virginia erred in holding that the supply lien law of the State of Virginia was valid and not in conflict with and repugnant to the fourteenth amendment to the Constitution of the United States, presents a Federal question and will be reviewed by this court if the question is properly presented by the assignment.

It is denied, however, that the sixth assignment of error properly presents this question.

Certain creditors of the William R. Trigg Company obtained an appeal and supersedeas to a decree of the Chancery Court of the city of Richmond, entered on the fourth day of February, 1908. This decree will be found on pages 51 to 57 of the printed record.

The first paragraph of this decree, after bringing the cause on to be heard, is as follows:

"On consideration whereof, the court, being of opinion that the William R. Trigg Company is a manufacturing corporation within the meaning of the Virginia labor and supply lien statute in force when this suit was instituted, and that said statute was not void as being contrary to the Constitution of the State of Virginia or to the Constitution of the United States of America, such questions being *res adjudicata* in this cause, or any other ground whatsoever, doth overrule the exceptions to said report of the Virginia Trust Company, the Savings Bank of Richmond, the First National Bank of Richmond, and the joint exception of the Virginia Trust Company, Trustee, and James N. Boyd and others, in so far as such exceptions proceed upon grounds contrary to the opinion above expressed."

Judge Cardwell in delivering the opinion of the Supreme Court of Appeals of Virginia upon appeal from this decree of the Chancery Court of the city of Richmond, uses this language P. R., 385):

"A history of the insolvency proceedings against the William R. Trigg Company, a corporation engaged in the building and equipment of ships, boats, and vessels at Richmond, Va., conducted in the above-styled cause and leading up to the adjudications of the Chancery Court of the city of Richmond, from which this appeal is taken, has been fully stated in the cases of *Trigg Co. vs. Bucyrus Co. et als.*, 104 Va., 79, and *Bank vs. Trigg Co.*, 106 Va., 327 and need not be here repeated. In this connection, however, it is to be noted that in those cases, as held by the decree now under review, the William R. Trigg Company was held to be a manufacturing corporation, within the meaning of the Virginia labor and supply lien statute in force when the company was chartered and when it became insolvent, and that said statute was not void as being contrary to the Constitution of the State of Virginia or to the Constitution of the United States. These questions are therefore '*res adjudicata* in this case.'"

The United States in their petition (P. R. 421) allege that they are aggrieved by the final decree entered in this case and pray for a writ of error from this final decree to the Supreme Court of the United States.

But the decision of the Supreme Court of Appeals of Virginia on the appeal from that decree does not pass upon the validity of the supply lien statute of Virginia upon the ground that said statute is in conflict with and repugnant to the fourteenth amendment to the Constitution of the United States. On the contrary, the Supreme Court of Appeals of Virginia in

reviewing this decree upon appeal, holds that this question is "*res adjudicata*" and does not pass upon the constitutional question.

From the record in the case of *Bank vs. Trigg Co.* it appears that on the 23rd of May, 1905, the Chancery Court of the city of Richmond entered a decree upholding the constitutionality of the labor and supply lien law of Virginia and this action was reviewed by the Supreme Court of Appeals of Virginia. On errors assigned by the First National Bank and the Savings Bank of Richmond, the question of the validity of this statute is reviewed by the Supreme Court of Appeals of Virginia and the validity of the statute affirmed, opinion by Keith, P., handed down January 27, 1907. This case will be found reported in 106 Va. 227.

The United States were parties to this suit prior to the decree of the Chancery Court of the city of Richmond entered on the 23rd of May, 1905.

They became parties by filing their stipulations for the discharge of these vessels.

The stipulation for the discharge of the "Benyuard" was filed under decree of court, July 14, 1903 (P. R. 410); that for the discharge of the "Mohawk" under decree of June 30, 1903 (P. R., 275); and that for the discharge of the "Galveston" under decree of June 22, 1903 (P. R. 225).

It thus appears that the United States were before the court nearly two years before the Chancery Court held this statute valid and did not appear as appellants when that question was reviewed by the Supreme Court of Appeals of Virginia.

Under such circumstances the Supreme Court of Appeals of Virginia held that the validity of this statute is "*res adjudicata*" in this cause.

If the United States had preserved their rights they could unquestionably have had the decision of the Supreme Court of Appeals of Virginia of January 27, 1907, in the case of *Bank*

vs. *Trigg Co.*, *supra*, affirming the validity of this statute reviewed by this court, but they have not seen proper to do so.

The record tends to show that they were satisfied with the correctness of this decision. The exceptions of the United States (P. R. 206 to 216), so far as peculiarly applicable to them, do not raise this question at all. At the end of the exceptions is the following:

"I beg leave furthermore to unite in the exceptions to the above mentioned report this day filed on behalf of the Virginia Trust Company by Messrs. Christian and Christian.

(Signed) L. L. Lewis, U. S. Attorney."

The validity of this statute is raised in the exceptions of the Virginia Trust Company (P. R. 217).

It is maintained that the United States, having failed to bring to this court by writ of error the decree of the Supreme Court of Appeals of Virginia in 1907 holding this statute valid, it cannot have this question considered upon writ of error to a decision of the Supreme Court of Appeals of Virginia in an opinion handed down by Judge Cardwell September 19, 1909. It cannot be successfully maintained that a Federal question is involved in "*res adjudicata*."

If, however, this court shall determine to review the decision of the Supreme Court of Appeals of Virginia holding that the supply lien statute of Virginia is not invalid and is not contrary to the fourteenth amendment to the Constitution of the United States, it is maintained that there is no error in the court thus holding. It is believed that no better or clearer argument can be made than to quote from the opinions of the Supreme Court of Appeals of Virginia in two cases.

The first case is *Virginia Development Co. vs. Crozer Iron Co.*, 90 Va., 126, in which the opinion was delivered by Lewis, P., and in *Bank vs. Trigg Co.*, 106 Va. 327, in which the opinion was delivered by Keith, P.

That portion of the opinion in the first named case applicable to this point is as follows:

"The validity of this legislation is assailed by the appellants, on the ground that it is unequal and partial; that it is special and class legislation; and in conflict with the fourteenth amendment of the Constitution of the United States, which, among other things, provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.

This contention strikes at the root of the statute, and, if sound, the statute, or rather the section of the Code in question, is void, independently of the provision giving precedence to the liens for which it provides over mortgages and deeds of trust. But we are of opinion, both on principle and authority, that the position is not sound.

That the statute is special in its character, *i. e.*, confined in its operation, so far as the furnishers of supplies are concerned, to those dealing with railway, canal, or other transportation companies, or mining or manufacturing companies, chartered under or by the laws of this State, or doing business within its limits, is obvious from its terms, and is not disputed. But it does not follow that because the statute is special it is invalid. It has been repeatedly decided by the Supreme Court of the United States, in construing the fourteenth amendment, that it is no objection to a statute that it is special, if all persons subject to it are treated alike under the same conditions.

It is, moreover, well settled by the decisions of that court, beginning with the *Slaughter-House Cases*, 16 Wall., 36, that the fourteenth amendment was not designed to limit, and does not limit, what is known as the police power of the States—that is, in the language

of the court in *Barbier vs. Connolly*, 113 U. S., 27, the power to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity.'

A familiar instance of the exercise of this power is the statute giving a mechanic's lien, which is special in its character, and yet its validity has never been judicially denied because its operation is confined to a particular class. The *Poor Man's law* is another instance of the same sort. So, in *Barbier vs. Connolly*, a municipal ordinance, prohibiting washing and ironing in public laundries between the hours of 10 o'clock at night and 6 in the morning, was sustained, although assailed as unwarranted class legislation, in that it discriminated between laborers engaged in the laundry business and those engaged in other pursuits, and thus denied to the former the equal protection of the laws. So, a statute making railroad companies, whose tracks are not fenced, liable for double damages for injuries to stock on their tracks, has been held not repugnant to the fourteenth amendment, either as the unlawful taking of property, or as denying the equal protection of the laws, notwithstanding it imposes upon railroad companies a special liability that is not imposed upon other persons. *Missouri Pacific R. R. Co. vs. Humes*, 115 U. S., 512; *Minneapolis Railway Co. vs. Beckwith*, 128 Id., 26. And many other instances of a similar nature might be mentioned, some of which are referred to in a note to *State vs. Goodwill*, 25 Am. St. Rep., p. 884.

A strong case on this point is *Missouri Railway Co. vs. Mackey*, 127 U. S., 205. There a statute of Kansas made every railroad company organized or doing busi-

ness in that State liable for all damages done to any of its employees in consequence of the negligence of its agents or other employees, thus abrogating with respect to railroad corporations the common law doctrine of fellow servants, and leaving it in full force as to other corporations and individuals. The statute was accordingly assailed as being special and discriminatory, and in violation of the fourteenth amendment, in that it deprived the defendant company of its property without due process of law, and denied to it the equal protection of the laws. But it was held that there was nothing in these objections; that the statute made no discrimination against any railroad company, but treated all alike, and, therefore, that there was no evasion of the constitutional rule of equality in such a case. In the course of its opinion the court, speaking by Mr. Justice Field, said:

'The objection that the law deprives railroad companies of the equal protection of the laws . . . seems to rest upon the theory that legislation which is special in its character is necessarily within the constitutional inhibition, but nothing can be further from the fact. The greater part of all legislation is special, either in the objects sought to be attained by it, or in the extent of its application . . . Such legislation does not infringe upon the clause of the fourteenth amendment requiring equal protection of the laws, because it is special in its character; if in conflict at all with that clause, it must be on other grounds. And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions.'

The same principle was reaffirmed in *Minneapolis Railway Co. vs. Beckwith*, 129 U. S., 26, which case was similar to *Missouri Pacific R. R. Co. vs. Humes*, *supra*. And in that case it was again declared that the fourteenth amendment, broad and comprehensive as it is, was not designed to limit the police power of the States, and that the nature and extent of legislation upon any subject falling within that power must necessarily depend upon the judgment of the Legislature.

These decisions, and the reasons upon which they rest, when applied to the present case, so fully meet the objections that have been urged to the legislation in question, as to render further discussion of the subject unnecessary. The statute makes no discrimination against any corporation brought under its influence, but treats all alike under similar conditions; and that is decisive of the question. With the wisdom or unwisdom, the justice or injustice, of the statute we have nothing to do. It was for the Legislature to say whether its operation should extend to all persons or corporations, or to those corporations only which are specially mentioned; and the discretion of the Legislature in the matter is not subject to judicial interference. *New York, &c., Railroad Co. vs. Bristol*, 151 U. S., 556, 570."

The opinion of the court in *Bank vs. Trigg Co.*, *supra*, so far as applicable to this point, is as follows:

"We do not entertain such views with respect to the statute under consideration.

In *Va. Devel. Co. vs. Crozer Iron Co.*, 90 Va., 126, 17 S. E., 806, 44 Am. St. Rep., 893, the question of the constitutionality of section 2486 of the Code was considered. Judge Lewis in his opinion considers at length the decisions of the Supreme Court of the United States

bearing upon the subject, and quotes from the opinion of Mr. Justice Field, in *Mo. Ry. Co. vs. Mackay*, 127 U. S., 205, 32 L. ed., 107, 8 Sup. Ct., 1161, as follows: 'The objection that the law deprives railroad companies of the equal protection of the laws . . . seems to rest upon the theory that legislation which is special in its character is necessarily within the constitutional inhibition, but nothing can be further from the fact. The greater part of all legislation is special, either in the objects sought to be attained by it, or in the extent of its application . . . Such legislation does not infringe upon the clause of the fourteenth amendment, requiring equal protection of the laws, because it is special in its character; if in conflict with that clause it must be on other grounds. And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions.' Referring to that decision and others which he cited, Judge Lewis continues: "These decisions, and the reasons upon which they rest, when applied to the present case, so fully meet the objections that have been urged to the legislation in question, as to render further discussion of the subject unnecessary. The statute makes no discrimination against any corporation brought under its influence, but treats all alike under similar conditions; and that is decisive of the question. With the wisdom or unwisdom, the justice or injustice, of the statute we have nothing to do. It was for the Legislature to say whether its operation should extend to all persons and corporations, or to those corporations only which are specially mentioned; and the discretion of the Legisla-

ture in the matter is not subject to judicial interference."

Since that time the statute has been in various particulars amended in the light of experience, but nothing has been added to or taken from it which affects its constitutionality. Almost innumerable cases have arisen since that decision, in which the statute has been resorted to, in both State and Federal courts, and rights claimed under it have always been enforced; and the wisdom of the enactment and the beneficence of its operation have been fully vindicated."

In addition to the authorities cited in the opinions above, this court in *Walston vs. Nevin*, 128 U. S., 578 (32 L. ed., 544), uses this language: "And whenever the law operates alike on all persons and property similarly situated equal protection can not be said to be denied." Again in *Wurts vs. Hoagland*, 114 U. S., 606 (29 L. ed., 229), the court says: "As the statute is applicable to all lands of the same kind, and as no person can be assessed under it for the expense of damage without notice and opportunity to be heard, the plaintiffs in error have neither been denied the equal protection of the laws nor been deprived of their property without due process of law within the meaning of the Fourteenth Amendment of the Constitution of the United States."

It is maintained that the argument in these cases establishes that this statute is not unconstitutional and invalid because in conflict with the Fourteenth Amendment to the Constitution of the United States, and that the authorities quoted in these opinions are conclusive.

It is believed that no authority can be found holding legislation such as the supply lien law of Virginia to be invalid because contrary to the fourteenth amendment unless there is some vice peculiar to the statute under consideration.

IV.

The first assignment of error and the third assignment of error (b), allege that the Supreme Court of Appeals of Virginia erred in holding that title to the "Benyuard" and to the "Galveston" had not vested in the United States at the time of the institution of this cause, namely: on the 23rd day of December, 1902.

It is maintained that the decision of the Supreme Court of Appeals of the State of Virginia upon this point is correct and that no title to these vessels had passed to the United States at the time of the institution of this suit, namely, the 23rd day of December, 1902. The general doctrine is stated by Judge Cardwell in his opinion in a quotation from *Mechem on Sales* (Printed Record, 393).

"Mechem on Sales, Vol. 1, Sec. 755, after stating the general rule under contracts for the construction of a vessel for a given price to be, that no property passes in the vessel until it be completed and delivered, says that this general rule is not varied by any of the following facts: 'That the price is to be paid in instalments as the work progresses; that the vessel is to be built under the superintendence of an inspector employed by the purchaser; that this inspector has the power to approve or reject the materials used in constructing the vessel; that the vessel is insured for the benefit of the purchaser; that the contract stipulates that the materials, as and when approved, should become the property of and belong to the purchaser. In other words the passage of title to a chattel to be constructed is a matter of intention of parties to be arrived at from the terms of the contract between them, the rule being that no property passes until completion and that none of the above-mentioned circumstances indicated an intention in the

parties to vary this general rule by the contract.' See also 2 Parsons on Contracts, 259, 260, where the authorities are cited and reviewed."

It is not deemed necessary to repeat the argument upon this point. It is deemed sufficient here to refer to and to rely upon the argument in the opinion of Judge Cardwell, and in the Petition for an appeal in this case.

The argument in the opinion of Judge Cardwell as to the title to these vessels will be found in the printed record beginning on page 387 and ending on page 400.

The argument as to the title to these vessels in the petition for appeal to the Supreme Court of Appeals of Virginia will be found in the printed record, under the second assignment of error, beginning on page 5 and ending on page 8, although this assignment of error is as to a vessel not being built for the United States; under the seventh and eighth assignments of error, beginning on page 11 and ending on page 15; and under the tenth assignment of error beginning on page 22 and ending on page 23.

The same arguments are repeated in subsequent assignments of error as to the "Galveston."

It is maintained:

First: That there is in this record no such color of a Federal question as to give this court the right to review the decision of the Supreme Court of Appeals of Virginia, because the United States as a contractor contract upon the same terms and subject to the same laws as an individual.

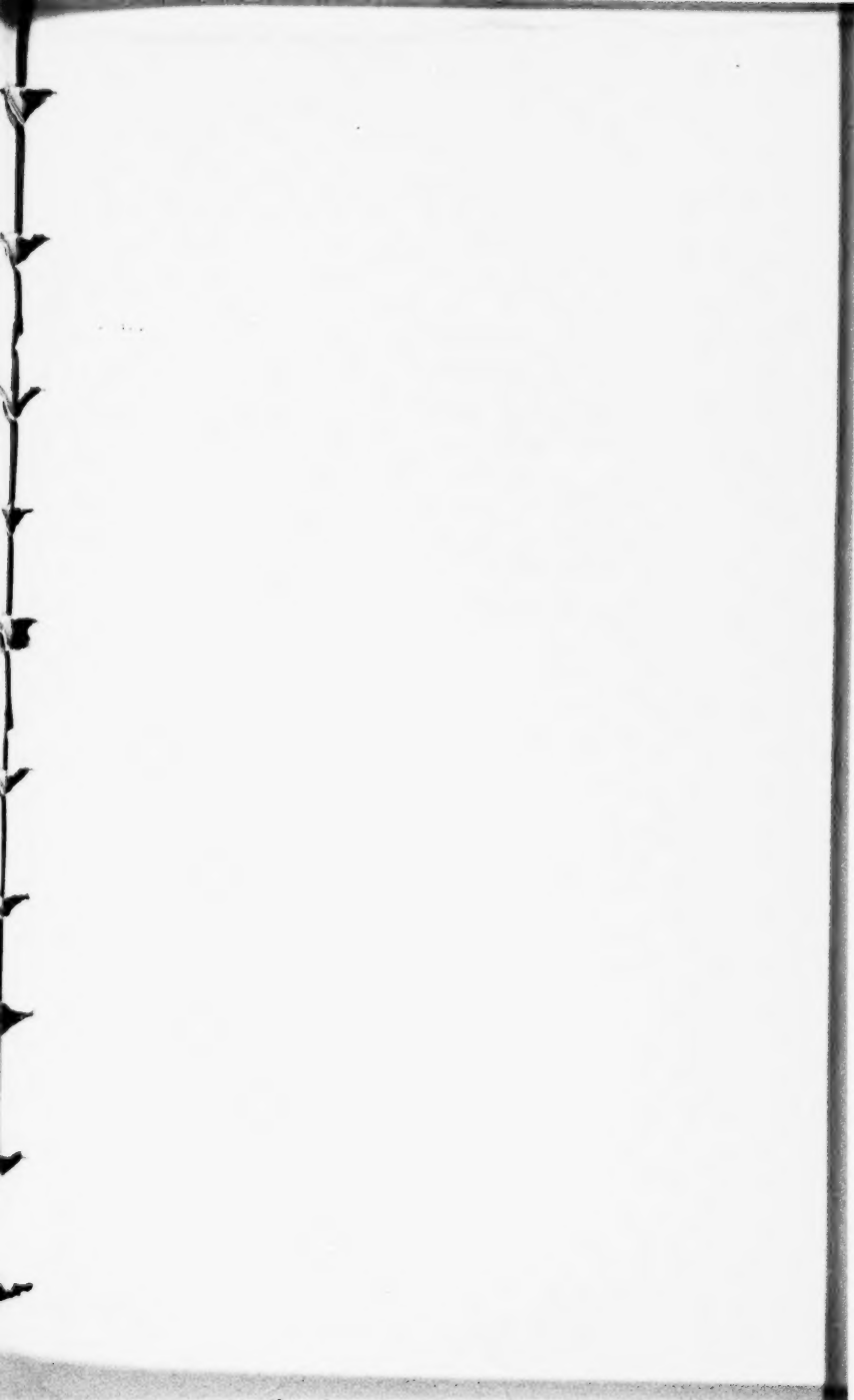
Second: If, however, this court should review the decision of the Supreme Court of Appeals of Virginia, it is maintained that all of the Federal questions raised in this cause by the assignments of error of the United States are properly decided and the decision of the State court must be affirmed.

Third (a): That the question of the validity of the supply lien statute of Virginia upon the ground of its being in conflict with the fourteenth amendment to the Constitution of the United States cannot be reviewed by this court because the decision of the Supreme Court of Appeals of Virginia upon this point has not been properly brought before it upon writ of error. (b) If this question had been properly brought before it, it is maintained that the decision of the Supreme Court of Appeals of Virginia is correct, and must be affirmed.

Fourth: If this court should review the decision of the Supreme Court of Appeals of Virginia as to the title to the vessels it is correct, and must be affirmed.

Respectfully submitted,

EPPA HUNTON, JR., *Attorney for*
Commercial Trust Co., Trustee,
Bank of Richmond, Inc., Trustee,
R. C. Hoffman & Co.,
Seaboard Steel Casting Co.,
Jamison, McKenzie & Evans,
Shelby Iron Co.,
The Bucyrus Co.



UNITED STATES *v.* ANSONIA BRASS AND
COPPER COMPANY.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE
OF VIRGINIA.

No. 458. Argued October 18, 1910.—Decided November 28, 1910.

Where the United States claimed in an action in the state court to determine liens on vessels in course of construction, that, under the contract, title had vested in the United States, or that liens had been specially reserved thereon, and also claimed that the rights of the United States were superior to all others and could not be retarded or impeded by the state lien law, assertions are made of rights and immunities which are the creation of Federal authority, and, if denied by the state court, this court has jurisdiction under § 709, Rev. Stat., to review the judgment.

Stipulations entered into by the United States district attorney to obtain possession of vessels in course of construction and seized by judicial proceedings under state law should not, under §§ 3753, 3754, Rev. Stat., be construed as depriving the United States of any rights asserted under the contracts for constructing such vessels.

Construing the three contracts for construction of vessels involved in this case, the court construes one contract as vesting title in the United States as the work progressed and the others as not giving the United States a superior lien on the uncompleted vessel as work progressed: in regard to the one contract, the state lien law does not, and in regard to the other contract such law does, apply.

Vessels in course of construction for the United States, the title to which under the contract, vests in the Government as fast as constructed, become instrumentalities of the Government and for reasons of public policy cannot be seized under state laws to answer private claims.

Quare, whether a joint resolution has the effect of an act of Congress; but *held* that the resolution of May 5, 1894, No. 24, 28 Stat. 582, permitting partial payments on vessels under construction for the Treasury Department, did not give the Government an express statutory lien on such vessels superior to those given to materialmen by the state lien law.

110 Virginia, 165, affirmed in part and reversed in part.

THE facts, which involve the construction of contracts for the construction of certain vessels for the United States and the relative rights of the United States and others claiming liens on such vessels, are stated in the opinion.

Mr. Lunsford L. Lewis, United States Attorney, with whom *Mr. Assistant Attorney-General Harr* was on the brief, for the United States:

Contracts made by the United States are not subject to state registry statutes; the recordation statute of Virginia does not apply thereto. *Dollar Savings Bank v. United States*, 19 Wall. 227; *Stanley v. Schwalby*, 147 U. S. 508; *United States v. Snyder*, 149 U. S. 210.

Title to the unfinished dredge did vest in the United States, under the contract, as the work progressed and was paid for.

As title, under the contract, passed to the United States as payments were made, the subsequent liens in question did not and could not attach to the vessel. *Millhiser v. Gallego Mills Co.*, 101 Virginia, 579, 585; *Briggs v. A Light Boat*, 7 Allen (Mass.), 287, holding that when property is acquired by the United States, it is taken *cum onere*, has no application. While in general, under a contract for a ship or other thing not yet *in esse* but to be constructed, no

title passes to the vendee before it is finished and ready for delivery, a contrary intent if apparent from the terms of the contract or the attending circumstances, that title shall pass before completion, will be effectuated. *Clarkson v. Stevens*, 106 U. S. 505; *Woods v. Russell*, 5 B. & Ald. 942; *Clarke v. Spence*, 4 Ad. & El. 448; *Laidler v. Burlinson*, 2 M. & W. 602. But see *Wood v. Bell*, 5 El. & B. 772; *Seath v. Moore*, 11 App. Cas. 350; *Scudder v. The Calais Steamboat Co.*, 1 Cliff. 370, 378; *Andrews v. Durant*, 11 N. Y. 35, Parker, J. See also 2 Mees. & Welsb.

The provision requiring the company to give bond with security for its faithful performance of the contract does not create any inference that title was not to vest as payments were made. The bond was no doubt required in order to secure the Government against any damage that might be sustained by reason of failure on the part of the contractor to do the work within the prescribed time or in a proper manner, as, in any other view of the case, the bond was certainly very inadequate security against damage which the Government might sustain on account of its payments or otherwise. *Clarkson v. Stevens*, 29 N. J. Eq. 607; *Andrews v. Durant*, 11 N. Y. 35; *Williams v. Jackman*, 16 Gray, 514; *Briggs v. A Light Boat*, 7 Allen (Mass.), 287; and *Clarkson v. Stevens*, 106 U. S. 505, distinguished.

As title to the dredge passed under the contract to the United States, the dredge is not subject to the supply-liens in question, and the right to raise this objection was in no wise waived by entering into the stipulation upon which possession of the vessel was surrendered to the Government, under § 3753, Rev. Stat.

Under the state statute, supply-liens can attach only to property belonging to the debtor corporation. *Millhiser &c. Co. v. Gallego Mills Co.*, 101 Virginia, 579, 585.

As to the Mohawk, the contract, unlike the Benyuard contract, did not stipulate for title as the work progressed, but for a lien for advances made during the progress of

the work. See joint resolution of Congress approved May 5, 1894, 28 Stats. 582.

When in such a case a lien is reserved the joint resolution operates upon it, and consequently the lien is a statutory lien, and as such, beyond the reach of state legislation. *United States v. Snyder*, 149 U. S. 210.

The contract was made with reference to the joint resolution, and Congress in passing the joint resolution did not contemplate that the lien directed to be reserved would be liable to be displaced or overridden by liens of any sort subsequently accruing. While in some States a joint resolution may not have the force of law, as held in *May v. Rice*, 91 Indiana, 546, 552; *Burritt v. Commissioners of State Contracts*, 120 Illinois, 322, 336; *Boyers v. Crane*, 1 W. Va. 176, joint resolutions of Congress do not in their effect differ from bills, and when duly passed have the effect of law. See Art. I, § 7, Constitution U. S.; Cushing, *Law & Pr. Leg. Assemblies*, 2403; 6 Op. Atty. Gen. 680; see also *Mullan v. State*, 114 California, 578, 585.

This joint resolution is not a delegation of legislative power. *Field v. Clark*, 143 U. S. 649, 693; 1 Jones, *Liens*, § 105. The lien of the Government upon the Mohawk is prior to the supply-liens in question, not because of any prerogative right, but because the lien is prior in time; and being prior in time, it cannot be divested or displaced by subsequent liens, although in the joint resolution nothing is said about the priority of the lien.

The contract is to be read in connection with the higher law, to wit, the joint resolution, and not the state supply-lien law, and it is the former and not the latter enactment that "enters into and becomes a part of the contract." *United States v. Maurice*, 2 Brock. 96. The power of the United States to contract is coëxtensive with the duties and powers of government. *United States v. Tingey*, 5 Pet. 115; *United States v. Bradley*, 10 Pet.

343; *Jessup v. United States*, 106 U. S. 147; *Van Brocklin v. Tennessee*, 117 U. S. 151, 154; *Moses v. United States*, 166 U. S. 571, 586.

The power of the Government to contract is, not less than the power of taxation, a necessary and indispensable incident of sovereignty. *Snyder Case*, 149 U. S. 210, 214. While the States are not expressly prohibited from interfering with the operations of the General Government, the inhibition comes by necessary implication. *Briggs v. A Light Boat*, 7 Allen (Mass.), 297; *United States v. Fox*, 94 U. S. 315; *United States v. Perkins*, 163 U. S. 625; *United States v. Bostwick*, 94 U. S. 53; *Southern Pacific Co. v. United States*, 28 C. Cl. 77; *Van Hoffman v. Quincy*, 4 Wall. 535; *Walker v. Whitehead*, 16 Wall. 314, distinguished. See *United States v. Thompson*, 96 U. S. 486; *United States v. Herron*, 20 Wall. 251; *Commonwealth v. Ford*, 29 Gratt. (Va.) 683.

What has been said in regard to the Mohawk equally applies to the Galveston contract. The Secretary of the Navy had the implied power to reserve a lien on the vessel. *United States v. Macdaniel*, 7 Pet. 1; *United States v. Corliss Steam-Engine Co.*, 91 U. S. 321. Every act of the Secretary did not have to be authorized by statute. *Haas v. Henkel*, 216 U. S. 462, and as to power to reserve the lien, see *Van Brocklin v. Tennessee*, 117 U. S. 151. See also *Hauselt v. Harrison*, 105 U. S. 401; *Burnheisel v. Firman*, 22 Wall. 170, 179; *Rorer v. Ferguson*, 96 Va. 411.

Mr. R. G. Bickford and *Mr. Eppa Hunton, Jr.*, for defendants in error:

The sovereignty of the United States Government is lawful, not lawless. Under a contract with an individual, the rights of the Government and the rights, not remedies, of the individual are precisely the same as if the contract were between individuals. *United States v. State Bank*, 96 U. S. 36; *United States v. Smith*, 94 U. S. 217; *United*

States v. Bostwick, 94 U. S. 66; *Mfg. Co. v. United States*, 17 Wall. 595; *Smool's Case*, 15 Wall. 45; *Gleason v. Gosnell*, 35 C. Cl. 90; *Southern Pac. Co. v. United States*, 28 C. Cl. 105; *Curtis' Case*, 2 C. Cl. 104; *Gilbert v. United States*, 1 C. Cl. 28; *858 Bales of Cotton*, 8 Fed. Cas. 389; 29 Am. & Eng. Ency. Law, 170; *McKnight v. United States*, 98 U. S. 186; *Fristoe v. Blum*, 45 S. W. Rep. 999.

The only difference between the individual and the United States in such contracts is a difference of remedy, not of right. *Brent v. Bank of Washington*, 10 Pet. 614; *United States v. Bank of Metropolis*, 15 Pet. 392.

It is a sovereign in its power of contract; it is a corporation as to the contract actually entered into. *Jones v. United States*, 1 C. Cl. 385. While the United States cannot be sued on its contracts, as that would be an invasion of its sovereignty, it may sue either in state or Federal courts as a corporation or body politic. *United States v. Detroit T. & L. Co.*, 200 U. S. 321; *United States v. Holmes*, 105 Fed. Rep. 43; *The Davis*, 10 Wall. 22; *Fink v. O'Neil*, 106 U. S. 280; *Carr v. United States*, 98 U. S. 438; *Mountain Copper Co. v. United States*, 142 Fed. Rep. 629; *Walker v. United States*, 139 Fed. Rep. 413; *United States v. Clark*, 138 Fed. Rep. 299; *United States v. Detroit Timber Co.*, 131 Fed. Rep. 677; *United States v. Ingate*, 48 Fed. Rep. 253; *United States v. Tellow*, Fed. Cas. No. 16,456; 28 Fed. Cas. 45; 29 Am. & Eng. Ency. of L. 172; 27 Am. & Eng. Ency. of L., 1st ed., 537.

Courts of a State may acquire jurisdiction over the United States by its voluntary submission and incidentally to such submission the United States renders itself liable to the operation of laws of the State of such tribunal. In like manner, the United States may render itself liable to the laws of the State by voluntary contract with persons, and respecting property, subject to state laws. *Ryan v. United States*, 136 U. S. 82; *United States v. 100 Barrels*, Fed. Cas. No. 15,945; *Clifford v. United States*, 34 C. Cl.

232; *United States v. Ames*, Fed. Cas. No. 14,441; *United States v. Crosby*, 7 Cranch (U. S.), 115; *New Orleans v. United States*, 10 Pet. 662; *Stearns v. United States*, 22 Fed. Cas. 1192; *Briggs v. A Light Boat*, 7 Allen, 297; *The Siren*, 7 Wall. 152; *The Davis*, 10 Wall. 19.

The right in private property or under contract, cannot be greater than the right of its grantor. The state statute fully operated before the right of the United States accrued. The Government took *cum onere*, and that was the intent of the parties. *Knowlton v. Moore*, 178 U. S. 41; *United States v. Perkins*, 163 U. S. 629; *United States v. Fox*, 94 U. S. 315; *United States v. Buford*, 3 Pet. 29; *Central Trust Co. v. Charlotte, C. & A. R. Co.*, 65 Fed. Rep. 259; *In re Merriam's Estate*, 36 N. E. Rep. 506; *Levaser v. Washburn*, 11 Gratt. 578; 25 Cyc. 661.

The Government was entitled merely to what the Trigg Company could give, and all that that corporation could give was that which remained of the property, after satisfying the supply-liens. This would be the result in a contract between individuals, and the same result follows though the vessels were to pass to the United States. *Briggs v. A Light Boat*, 7 Allen, 296, 297; *McNeal & Co. v. Howland*, 16 S. E. Rep. 857; *The Revenue Cutter No. 1*, Fed. Cas. No. 11,713; *The Revenue Cutter No. 2*, Fed. Cas. No. 11,714.

The contract should be construed agreeably with the intent of the parties. Both the Government and the Trigg Company intended that the rights of the Government should be subject to the supply-lien law. This was an actual as well as a legal intent. As to the legal intent, see *Brine v. Insurance Co.*, 96 U. S. 643; *Provident Institution v. Jersey City*, 113 U. S. 511; *Van Stone v. Stillwell*, 142 U. S. 136; *Brent v. Bank of Washington*, 10 Pet. 596.

The Galveston contract, which was the first of the three contracts, expressly recognizes that the rights which were

given by the Trigg Company to the United States were subject and were intended to be subject, to the lien laws of the State. Op. Atty. General Griggs, June 21, 1900, cited approvingly in *Penn Iron Co. v. Trigg Co.*, 56 S. E. Rep. 329.

There was no common-law lien; the possession of the Galveston remained with the Trigg Company until long after the supply-liens were filed. Therefore the Government did not have a common-law lien. Neither was it a pledge, for here, also, possession passes to the creditor. 3 Pomeroy's Eq. Jur. 2466. The lien, if any, was void as to third persons at common law. 7 Bacon's Abridgment, 181, and there is a preponderance of authority that there is no lien as between the parties themselves. 22 Am. & Eng. Ency. of Law, 853, 854, 855.

As property remained in the Trigg Company, by the express terms of the supply-lien statute, the supply-lienors had the prior right. The United States is entitled to prior liens or rights only where some statute provides for such priority. *United States v. Bank of North Carolina*, 6 Pet. 34; *United States v. Canal Bank*, Fed. Cas. No. 14,715; 25 Fed. Cas. 278. See also *Conard v. The Atlantic Ins. Co.*, 1 Pet. 441; *Briggs v. A Light Boat*, 7 Allen, 297; *United States v. American Surety Co.*, 111 Fed. Rep. 914; *United States v. Heaton*, 128 Fed. Rep. 414; *United States v. Detroit Lumber Co.*, 131 Fed. Rep. 668; *C. C. A. U. S. v. American Surety Co.*, 135 Fed. Rep. 79.

There is no statute giving priority; therefore, none exists. The joint resolution requiring the Secretary of the Treasury to insert in the contract a provision for a lien neither gives a lien, nor did Congress intend it to have that effect. It clearly contemplates a contractual and not a statutory lien. *United States v. Snyder*, 149 U. S. 210, and see 1 Jones on Liens, § 105; 2 Mechem on Sales, § 755; 2 Parsons on Contracts, 8th ed., 259; *Merritt v. Johnson*, 7 Johns. (N. Y.) 473; *Andrews v. Durant*, 11

N. Y. 34; *People v. Commissioners*, 58 N. Y. 244; *Hall v. Green*, 1 Houst. (Del.) 546; *Shaw v. Smith*, 48 Connecticut, 306; *Yukon River Steamboat Co. v. Brotto*, 136 California, 538; *Williams v. Jackman*, 16 Gray, 514; *Low v. Austin*, 20 N. Y. 182; *Briggs v. A Light Boat*, 7 Allen (Mass.), 287; *Wright v. Tellow*, 99 Massachusetts, 397; *Forsythe v. Dickson*, 1 Grant's Cases, 26 (Penn.); *Scully v. Shakespeare*, 75 Pa. St. 297; *Lang's Appeal*, 81 Pa. St. 18; *Coursin's Appeal*, 79 Pa. St. 220; *Strong v. Dinniry*, 175 Pa. St. 586; *S. C.*, 34 Atl. Rep. 919; *Haney v. Schooner Rosabelle*, 20 Wisconsin, 261; *Elliott v. Edwards*, 35 N. J. L. 265; *West Co. v. Trenton Co.*, 35 N. J. L. 517; *Stevens v. Shippen*, 29 N. J. Eq. 602; *Revenue Cutter No. 1*, Fed. Cas. No. 11,713; *Revenue Cutter No. 2*, Fed. Cas. No. 11,714; *The Sam Slick*, Fed. Cas. No. 12,283; *Clarkson v. Stevens*, 106 U. S. 505; *The Poconoket*, 67 Fed. Rep. 262; *The John B. Ketchum*, 97 Fed. Rep. 872; see also *Trigg v. Bucyrus Company*, 51 S. E. Rep. 175, 176.

The contract is entire and the installment payments were made upon the faith of the complete performance of the entire contract, the doing of all the work, the supplying of all materials.

Giving to the Benyuard contract and specifications the full effect claimed by the Government, the supply-lienors are yet entitled to a claim on that vessel. *Wood v. Skinner*, 139 U. S. 293, 295; *Murdock v. Memphis*, 20 Wall. 590, 636; *Pollard's Code*, 1904; *Smith v. Howard*, 53 N. E. Rep. 143, 144; see also *Kerr v. Moon*, 9 Wheat. 565.

The Virginia recording statutes operate precisely as did the inheritance tax law of New York. See *Knowlton v. Moore*, 178 U. S. 41; *United States v. Perkins*, 163 U. S. 629; *Ryan v. United States*, 136 U. S. 86; *Burbank v. Conrad*, 96 U. S. 292, 293; *Stewart v. Platt*, 101 U. S. 737; *Montgomery v. Wright*, 8 Michigan, 147, 148.

MR. JUSTICE DAY delivered the opinion of the court.

This is a writ of error to the Supreme Court of Appeals of Virginia. The controversy grows out of contracts made between the United States and the William R. Trigg Company, a corporation organized under the laws of the State of Virginia, carrying on business at Richmond, Virginia, for the construction of certain vessels for the United States, namely, a sea-going suction dredge, called the Benyuard, for the War Department; a revenue cutter, called the Mohawk, for the Treasury Department; and a cruiser, for the Navy Department, called the Galveston. The contract price for the Benyuard, apart from its pumping machinery, was \$254,550; for the Mohawk, \$217,000; and for the Galveston, \$1,027,000. These contracts were dated, for the Benyuard, September 9, 1901; for the Mohawk, April 20, 1900; and for the Galveston, December 14, 1899.

In December, 1902, S. H. Hawes & Company filed a bill in the Chancery Court at the city of Richmond, on behalf of themselves and other creditors, asserting liens under the supply-lien law of the State of Virginia, averring the insolvency of the Trigg Company, and asking for the appointment of a receiver, which was accordingly made. The receiver took possession of the property of the Trigg Company, including the vessels above named. Under §§ 3753 and 3754 of the Revised Statutes of the United States a stipulation was executed by the United States district attorney, on behalf of the United States, for the release and discharge of the vessels, and the material on hand applicable thereto.

Thereafter the case proceeded to judgment, and, on final appeal to the Supreme Court of Appeals of Virginia, the liens under the supply-lien law of the State were held superior to any claim or lien of the Government. In the case of the Benyuard, two of the five judges of that court

dissented from the opinion of the majority, holding that the title to the Benyuard had passed to the United States under the terms of the contract under which it was constructed. The case is reported in 110 Virginia, 165.

It is contended that there is no jurisdiction in this court to review the judgment of the Supreme Court of Appeals of Virginia, as no Federal question was decided in that court which would lay the foundation for the writ of error. In the third class of cases provided for in § 709 of the United States Revised Statutes, it is expressly provided that where any right, title, privilege or immunity claimed under the Constitution, treaty or statute of the United States, or an authority exercised under the United States, is specially set up or claimed by either party, and the decision is against such right, title, privilege or immunity, the same may be reëxamined and reviewed by writ of error from this court.

An examination of the record discloses that the Government claimed in the case that under the contract the title to the dredge vested in the United States by virtue of the terms of the contract; that a lien was reserved to the United States under the contract for the cutter Mohawk and the cruiser Galveston, which was superior to the claims of the supply-liens' creditors under the laws of the State of Virginia. The Government further contended that the right of the Government to its superior claims upon the vessels, whether of title or lien, could not be affected by, and were not subject to, the lien statutes of the State of Virginia. The Government also claimed that the State had no power to retard, impede or control the operation of the Federal Government in making and carrying out such contracts as are herein under consideration.

We think that from this statement of the claims made in the court below on behalf of the United States assertions were made of rights and immunities which were the creation of Federal authority, and the denial thereof

by the judgment of the state court brings the case within the provisions of § 709 of the Revised Statutes of the United States. It is not necessary to lay the foundation for jurisdiction that the claims of Federal rights asserted should be well founded; it is enough if they are substantial claims of Federal rights within the statute, and such as were duly asserted and directly or necessarily denied in the judgment and decision of the state court.

Nor do we think there is anything in the stipulation entered into on the part of the Government by the United States district attorney, with a view to getting possession of the vessels, which were in the hands of the receiver, which in anywise deprived the Government of the right to assert any such immunity and privilege as it has because of the nature and character of the contracts and the lien of the Government in the premises.

An examination of these sections, 3753-3754, shows that they are intended to permit the United States to obtain possession of property claimed by it, when the same has been seized by judicial proceedings under the laws of the State, and to give to it and to the persons asserting rights in the property protection in their rights, notwithstanding such changes in possession.

In § 3753 it is expressly provided that "nothing herein contained shall, however, be considered as recognizing or conceding any right to enforce by seizure, arrest, attachment or any judicial process any claim against any property of the United States, or against any property held, owned or employed by the United States, or by any department thereof, for any public use, or as waiving any objection to any proceeding instituted to enforce any such claim."

Section 3754 provides for the protection of persons asserting claims against such property, and that after final judgment given in the court of last resort, to which the Secretary of the Treasury may deem proper to carry

the proceedings, affirming the rights of the persons asserting claims for the security or satisfaction of which such proceedings were instituted in the state courts against such property, notwithstanding the claims of the United States, the final judgment shall be deemed to all intents and purposes as a final determination of the rights of such persons, and shall entitle such persons as against the United States to such right as they would have in case the possession of such property had not been changed. The section provides for the payment of such final judgment out of the Treasury of the United States.

The evident purpose of these sections is that neither the United States nor the claimants to the property shall lose any rights because of the release of the property under the stipulation, but as were the rights of the parties before the change of possession such they shall continue to be. We do not agree that by entering into a stipulation, which embodied these terms, the United States lost any right which it had to assert claims under the contracts, or rights by reason of the sovereignty of the United States, if any such exist. We think this court has jurisdiction of this case upon this writ of error.

Taking up the consideration of the case as to these several vessels, and first as to the Benyuard, this dredge was constructed under the provisions of a contract which are thus summarized by the master in the Virginia Chancery Court:

"Materials furnished and the work done by the William R. Trigg Company were to be subject to rigid inspection by an inspector appointed on the part of the Government, his decision to be final as to quantity and quality.

"If the Trigg Company should fail to begin or prosecute the work in accordance with the specifications, which were made a part of the contract, the contract might be annulled by the Government. In that case all payments were to cease, and all money or reserved percentage must

be retained until the final completion and acceptance of the boat. The Government was to have the right to recover anything paid for such completion in excess of the original contract price with the William R. Trigg Company, including all extra cost of inspection; and might proceed under section 3709 of the Revised Statutes of the United States to provide for the completion of the boat by open purchase or contract, unless the time for such completion should be extended.

"It was expressly provided that the William R. Trigg Company should be responsible for and pay all liabilities incurred in the prosecution of the work for labor and materials.

"Section nine of the contract was as follows:

"'It is further agreed by and between the parties hereto that until final inspection and acceptance of, and payment for, all materials and work herein provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the party of the first part to reject any defective work or material or to require the fulfilment of any of the terms of the contract.'

"Section 199 of the specifications was as follows:

"'The purpose and spirit of these specifications are that the contractor is to provide and deliver a staunch dredge hull and first-class machinery, complete in every respect.'

"Section 206 of the specifications was as follows:

"'It is understood and agreed that the contractor assumes full responsibility for the safety of his employees, plant, and materials, and for any damage or injury done by or to them from any source or cause.'

"Section 209 provided for sea trials at the expense of the contractor, any defects that might appear to be remedied at his expense and trials to be repeated until the steamer should be found satisfactory in all respects. Section 210 provided that if the requirements of the specifications were complied with, ten (10) equal payments

should be made, based on the reports of the inspector, the first when the hull and propelling machinery should be 10 per cent complete, the second when 20 per cent complete, and so on, to the last payment to be made, when the vessel should be turned over to the United States after successful trial; from each of said payments, except the last, 20 per cent to be reserved until final payment.

"Section 211 was as follows:

" 'The parts paid for under the system of partial payments above specified shall become thereby the sole property of the United States, but this provision shall not be interpreted as relieving the contractor from the sole responsibility for the proper care and protection of said parts prior to the delivery of the dredge to the United States, or from any other of the provisions of these specifications.'

"Section 212 provided for insurance against fire and marine risks at the contractor's cost, for and in behalf of the United States, to at least the amount of each partial payment.

"The evidence shows that the Government had paid \$142,550.80 on account of this contract when the receiver was appointed in this cause, and that said dredge was then 70 per cent complete."

It is the contention of the Government that the terms of this contract are such that by its expressed provisions the vessel was to become the property of the United States as fast as it was paid for. A majority of the learned judges of the Supreme Court of Appeals of Virginia were of opinion that title did not pass to the Government under this contract, and that it was subject to the superior lien of claimants under the state laws of Virginia. It is undoubtedly true that the mere facts that the vessel is to be paid for in installments as the work progresses, and to be built under the superintendence of a government inspector, who had power to reject or approve the materials, will

not of themselves work the transfer of the title of a vessel to be constructed, in advance of its completion. But it is equally well settled that if the contract is such as to clearly express the intention of the parties that the builder shall sell and the purchaser shall buy the ship before its completion, and at the different stages of its progress, and this purpose is expressed in the words of the contract, it is binding and effectual in law to pass the title. 2 Parsons on Contracts, 8th ed. 259, and cases cited.

All sections of the agreement must be read in the light of the purposes of the contracting parties as gathered from the entire contract, and must be considered in connection with other provisions of the contract. And it is said that § 212, as to insurance, does not show an intention to protect the title transferred to the Government, but must be read in the light of the purpose of the Government to acquire title to the dredge in the event that it ultimately elected to take it over as a purchaser, the ownership in the meantime remaining in the builder until such final decision was made, and the insurance was required for the Government's security for the partial payments.

But we cannot agree to this construction of § 212. The ownership clause provides that parts paid for *are to become the sole property of the United States* (specifications, § 211), insurance was to be provided by the contractor preceding each partial payment, that is, as fast as title vested in the Government by reason of the partial payments insurance was to be effected "to at least the amount of such partial payment, and the property was to be kept insured to at least the aggregate of the payments made until delivery and final acceptance."

It is insisted that the right to reject the dredge, or to annul the contract, is inconsistent with the passage of title under the provisions of § 211 of the specifications, however positive that section may be in terms.

Section 9 of the contract provides:

"It is further agreed by and between the parties hereto that until final inspection and acceptance hereof, and payment for, all the material and work herein provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the party of the first part to reject any defective work or material, or to require the fulfillment of any of the terms of this contract."

Let it be conceded that this section gave the Government the right to reject defective work or material, or even the entire dredge, if, upon trial and before final acceptance, it proved defective, is that right inconsistent with the vesting of title in the parts as paid for, as specifically provided in § 211? We think not. It may be that in such contingency the Government might reject the dredge. This might be true consistently with the acquirement of title in parts accepted and paid for after inspection. That is, if the whole, upon final trial, proved defective, all, including the restoration of that acquired, might be within the power of the Government. See in this connection, *The Poconoket*, 67 Fed. Rep. 262, 266.

The provisions of § 4 look rather to the completion of the vessel by the Government in the event of the annulment of the contract for failure to keep its requirements. In that contingency it is provided that payments shall cease and reserved payments be retained until the final completion and acceptance of the work. In this section the United States is given a remedy for the cost of completion upon the failure of the contractor to prosecute the work according to the contract.

Nor do we find it inconsistent with the vesting of the title in parts that bond was taken in the sum of \$60,000 for the performance of the contract. The United States might well secure itself in this sum, notwithstanding it took title to parts as paid for. Security might nevertheless be required for the faithful doing of the work within the stipulated time. It is also true that the Trigg Com-

pany was to be responsible for and pay all liabilities for labor and material incurred in the prosecution of the work. We are at a loss to see any inconsistency between this provision and the passing of the title in parts as paid for. Construing the whole contract, we find nothing in its other provisions which cuts down or lessens the binding force of the clear and distinct provisions of § 211 as to ownership. The parties therein dealt with a specific part of the contract, they expressed themselves clearly upon the subject, and it is not to be presumed, in the absence of clear expression or necessary implication, that they intended to supersede this provision in dealing with other specific or general parts of the agreement.

It is suggested, in this connection, that the contract with the Government in the case of the *Benyuard* is not different in effect than the one passed upon in *Clarkson v. Stevens*, 106 U. S. 505. In that case the contract provided that the materials received at the yard for the construction of the steamer should be distinctly marked with the letters "U. S.," and should become the property of and belong to the United States. There was no provision that title to the vessel should vest in the United States as fast as parts thereof were constructed, and Mr. Justice Matthews, who delivered the opinion of the court, approved the opinion of the Court of Errors and Appeals of New Jersey, expressing the view that the declaration as to the materials excluded the implication sought to be raised as to the title in the unfinished ship; "for," said Mr. Justice Matthews, "the inference is obvious, from the particularity of such a provision, that the larger interest would not be left to mere intendment." *Clarkson v. Stevens*, 106 U. S. 516.

In *Briggs v. A Light Boat*, 7 Allen, 287, a builder's lien, taken under the Massachusetts statute on a light-boat being built for the United States, was sustained. In that case the contract made no provision for a lien in favor

of the Government or the passing of the title to the boat in progress of construction. Mr. Chief Justice Bigelow, delivering the opinion of the Supreme Judicial Court of Massachusetts, used this significant language (page 297).

"If this were a suit brought by the builders to enforce a lien for materials furnished for the construction of a ship under a contract directly with the Government, or for repairs on a public vessel, the title of which was vested in the United States at the time the work was done or the supplies were furnished, the argument founded on public policy, and the suggestions arising from the inconvenience of causing delay and embarrassment to the public service, would be entitled to very great weight. It might in such case be open to grave doubt whether a lien on the property of the United States could be given by virtue of an enactment of the legislature of a State, or whether services rendered and materials supplied directly to the Government must not be presumed to have been furnished exclusively on the faith and credit of the United States, to the exclusion of any intent to rely on a lien upon the public property. But considerations of this nature have no application to a case like the present. It would have been competent for the United States, if they wished to avoid the inconvenience or danger of delay arising from liens in favor of private persons, to make their contract in such form as to divest the builder of any title to the property in the vessel during the process of construction, or to stipulate for the application of the purchase money to the extinguishment of all claims for materials furnished to the builder."

As we construe the contract for the construction of the Benyuard, it did "divest the builder of any title to the property in the vessel during the process of construction." The question in this aspect of the case then becomes one as to the right of a state lien law to fasten upon the prop-

erty of the United States, and that property a vessel intended for the use of the Government in carrying on its necessary operations in the exercise of its governmental authority.

It was in recognition of the inability of contractors for labor and material to take liens upon the public property of the United States that Congress passed the act of August 13, 1894, c. 280 (28 Stat. 278), amended February 24, 1905, c. 778 (33 Stat. 811), providing for bonds in favor of those who furnished labor or materials in the construction of public works. It was in view of this purpose to provide protection for those who could not protect themselves by liens upon public property that the statute was given liberal construction in this court. See *Guaranty Trust Co. v. Pressed Brick Co.*, 191 U. S. 416, 425; *Hill v. Surety Co.*, 200 U. S. 197, 203.

As we read the decision of the Supreme Court of Appeals of Virginia, it is not held that a lien was fixed upon the dredge, if in fact the title thereto passed to the United States. In any event, it could not be tolerated that property of the United States could be seized or encumbered under state lien laws of the character in question. We are not now dealing with the right of a State to provide for such liens while property to the chattel in process of construction remains in the builder, who may be constructing the same with a view to transferring title therein to the United States upon its acceptance under a contract with the Government. We are now treating of property which the United States owns. Such property, for the most obvious reasons of public policy, cannot be seized by authority of another sovereignty against the consent of the Government. The Benyuard, as fast as constructed, became one of the instrumentalities of the Government, intended for public use, and could not be seized under state laws to answer the claim of a private person, however meritorious.

Nor do we think the case one for the application of the doctrine governing cases where the United States claims an interest in property lawfully in possession of a court which is administering it—as in equity or in admiralty—and the Government intervenes to protect its interest therein. In such instances its rights must be adjudicated in recognition of the rights and demands of others interested in the same property. In this case the vessels were released under a stipulation which fully protected the rights of the United States, and the Government claims the exclusive right and title in the Benyuard as the parts were completed and paid for.

In the case of the Mohawk there is no such stipulation as to passing of the title on partial payments in the progress of the work as is found in the contract for the Benyuard. The Secretary of the Treasury was, in his discretion, to make partial payments under the contract during the progress of the work, not to exceed 75 per cent of the value of the labor and materials actually furnished and delivered, and a lien was reserved for such payments, in the following language:

“Provided, That a lien shall be, and hereby is, reserved to the United States upon the hull, machinery, fittings and equipment of said vessel, and the materials on hand for use in her construction, respectively and collectively, for all moneys advanced on account thereof, and that such lien shall commence with the first payment, and shall thereupon attach to the work and the materials furnished, and shall in like manner attach from time to time, as the work progresses, and as further payments are made, and shall continue until the completion and acceptance of said vessel.”

This lien, it is asserted, was reserved in accordance with a joint resolution of Congress passed May 5, 1894, No. 24 (28 Stat. 582, 583), which is as follows:

“Resolved by the Senate and House of Representatives

of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, authorized to make partial payments, from time to time, upon existing contracts and all contracts hereafter made for the construction of vessels for the Treasury Department, but not in excess of 75 per cent of the amount of the value of the work already done; and that the contracts hereafter made shall provide for a lien upon such vessels for all advances so made: Provided, That nothing in this joint resolution shall be construed to hereafter authorize any partial payments except on contracts stipulating for the same, and then only in accordance with such contract stipulation."

On behalf of the Government it is contended that this resolution makes the lien of the Government, reserved under the contract, an express statutory lien by authority of the United States, and consequently superior to any asserted rights under the lien laws of a State. But we cannot agree to this contention. The joint resolution, if it be conceded to have the effect of an act of Congress, does not undertake to create a statutory lien, but directs how contracts thereafter made shall provide with reference to liens upon such vessels. As to future contracts, it is directed that they shall provide for liens upon vessels for advances thus made. We think the lien mentioned is only one created by the terms of the contract and is to be considered in the light of the other provisions thereof.

At the time of entering into the contract, a bond was required and was given by the Trigg Company in the penal sum of \$45,000, conditioned for the proper construction of the vessel according to the contract and specifications, and that the Trigg Company should promptly make payments to other persons supplying labor and materials in the prosecution of the work. We think this requirement was a distinct recognition on the part of the Government that the Trigg Company might become in-

debted to other persons who should perform labor or furnish materials in the building of the vessel, who might become entitled, by reason of such claims against the company, to liens upon the property.

The contract was made with the Virginia corporation, and it was intended that the bond required of the Trigg Company should protect the Government against rights arising out of labor performed or material furnished in the construction of the vessel. Conceding it to be true for this purpose, as asserted by the counsel for the Government, that the United States can make contracts providing liens of this character which shall be superior to the claims of any persons for liens under state laws, it is none the less certain that it may if it chooses recognize the authority of the States to protect persons who may furnish labor or materials for the construction of government work. Indeed, such, as we have seen, is the policy of the Government in respect to public buildings and structures, upon which liens cannot be taken under the laws of the States. In order that such claims may be satisfied the United States has made provision for their protection by bonds upon which persons may recover damages, so that those who furnish property of which the Government receives the benefit shall not entail a loss by so doing. Read in the light of this policy, so manifestly just and proper, and the requirements of this contract and bond, we think that the Government did not intend that the lien, which it reserved for itself, should be superior to that of contractors for labor and material who had contributed to the work.

The case of the Galveston is controlled by the same principles. In that contract there was no provision for taking title to the vessel; on the contrary, it was stipulated that on certain conditions the title should vest in the United States as collateral security, and the eighteenth clause of the contract provides for the release of liens

before partial payments shall be required. This clause is distinct and clear in its requirements, and reads:

“When a payment is to be made under this contract, as a condition precedent thereto, the Secretary of the Navy may, in his discretion, require, for the protection of the party of the second part, evidence satisfactory to him, to be furnished by the party of the first part, that no liens or rights *in rem* of any kind against said vessel, or her machinery, fittings, or equipment, or the material on hand for use in the construction thereof, have been or can be acquired for or on account of any work done or any machinery, fitting, equipment, or material already incorporated as a part of said vessel, or on hand for that purpose, or that such liens or rights have either been released absolutely, or so subordinated to the rights of the Government as to make its lien for all payments paramount, so as not to encumber or hinder in any way the right of the Government to accept or reject said vessel, and so as to become absolutely extinguished in case of the acceptance of the vessel.”

The effect which we give this provision is strengthened by the opinion rendered to the Secretary of the Navy by the Attorney General, that in his opinion the practice of the Navy Department in making such contracts recognized that liens of this class might be acquired on vessels where there was no provision in the contract for vesting title in the same in the United States. 23 Op. Atty. Gen. 174, 176.

We think that this contract, as the one for the Mohawk, was made in recognition of the rights of those who should furnish work or material for the vessel to secure their claims by liens which it was made the duty of the contractor to provide for in order to protect the title of the United States.

Upon the whole case we reach the conclusion that judgment must be affirmed as to the Mohawk and Galveston,

and reversed as to the Benyard, and it is so ordered. The case is remanded to the Supreme Court of Appeals of Virginia for further proceedings not inconsistent with this opinion.
